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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial reports by States parties due in 1993

Addendum

PARAGUAY

[1 February 1994]

CONTENTS

	Paragraphs	Page
Introduction	1	3
I. GENERAL	2 - 30	3
A. Protection of rights under the Constitution	2 - 7	3
B. Possibility of invoking the Provisions of the Covenant in court	8 - 12	4
C. Authorities with jurisdiction affecting human rights	13 - 17	4
D. Remedies available to an individual who claims his rights have been violated	18 - 26	5
E. Other measures adopted to guarantee implementation of the Covenant	27 - 30	8

CONTENTS

	Paragraphs	Page
II. INFORMATION RELATING TO THE IMPLEMENTATION OF ARTICLES 1 TO 27 OF THE COVENANT	31 - 572	9
Article 1	31 - 35	9
Article 2	36 - 54	9
Article 3	55 - 94	12
Article 4	95 - 100	18
Article 5	101 - 103	20
Article 6	104 - 138	21
Article 7	139 - 170	25
Article 8	171 - 187	29
Article 9	188 - 210	32
Article 10	211 - 261	36
Article 11	262 - 263	42
Article 12	264 - 283	43
Article 13	284 - 289	46
Article 14	290 - 344	47
Article 15	345 - 355	56
Article 16	356 - 368	58
Article 17	369 - 421	60
Article 18	422 - 442	68
Article 19	443 - 454	71
Article 20	455 - 464	72
Article 21	465 - 473	74
Article 22	474 - 491	75
Article 23	492 - 510	78
Article 24	511 - 530	81
Article 25	531 - 548	85
Article 26	549 - 552	88
Article 27	553 - 572	89
Conclusion	573 - 579	92
Annex: Sources of information		94

Introduction

1. The Republic of Paraguay, pursuant to article 40 of the International Covenant on Civil and Political Rights, submits to the Secretary-General of the United Nations the first report on the implementation of the principles and rules relating to basic human rights recognized in the Covenant. This report sets out, article by article, the legislative, judicial, administrative or other measures operative or adopted in Paraguay to implement the provisions of the Covenant. For a better understanding of the general part below, reference should be made to the first general report of States parties (HRI/CORE/1/Add.24).

I. GENERAL

A. Protection of rights under the Constitution

2. The articles of the Paraguayan Constitution, which was promulgated on 20 June 1992, provide for comprehensive protection of human rights. This means that Paraguay provides twofold protection of human rights, at the constitutional and domestic legal level and also at the international level, since it has ratified most of the international human rights instruments, one of them being the International Covenant on Civil and Political Rights.

3. Indeed, in the matter of human rights, the new Constitution has incorporated civil and political rights and protects, inter alia, the right to life (arts. 4 and 6); prohibits torture and cruel, inhuman or degrading treatment or punishment (art. 5); the right to freedom and security of person (art. 9); prohibits slavery and other forms of servitude (art. 10); the right to a defence and procedural rights (arts. 16 and 17); freedom of religion and ideology (art. 24); freedom of expression and of the press (art. 26); freedom of association (art. 42); the rights of the family (arts. 47 to 61); the rights of indigenous peoples (arts. 62 to 67); the right to health (arts.62 to 72); the right to education and culture (arts.73 to 85) and political rights and duties (arts.117 to 126).

4. One of the institutions established to protect human rights is the Office of the Ombudsman, provided for in the Constitution. The establishment of this institution, which is a new feature of Paraguay's legislation, is of unquestionable significance because of its constitutional status.

5. Article 42, in chapter V of the Constitution, entitled "International Relations", stipulates that "International human rights treaties may be denounced only by the procedures which apply for amendments to this Constitution". This article unquestionably reinforces the intention to safeguard the full effectiveness of fundamental human rights.

6. Since 1989, when it took its first steps towards a full return to democracy, Paraguay has ratified numerous human rights treaties and, pursuant to a specific provision, it may denounce them only after a period of three years and on the initiative of one quarter of one of the Chambers of Congress, or 30,000 voters or the President of the Republic. Any such denunciation must be approved by an absolute majority of the initiating Chamber.

7. The circumstances and requirements for suspending certain rights and guarantees will be discussed in the reply concerning article 4 of the Covenant.

B. Possibility of invoking the provisions of the Covenant in court

8. First, it is important to emphasize the place that the Covenant holds in the Paraguayan legal system. In this respect, the law operative in the Republic of Paraguay consists of rules from various sources, and they respond to the requirements set out in the Constitution.

9. In chapter I, of the Constitution, concerning "Fundamental Declarations", article 137 stipulates: "The supreme law of the Republic is the Constitution. The Constitution, approved and ratified international treaties, conventions and agreements, the laws enacted by Congress and other legal provisions of lower rank constitute domestic positive law in the order of precedence enunciated. Any attempt to change this order without observing the procedures laid down in this Constitution shall constitute offences which shall be classified and punishable by law. Any government measures or acts at variance with the provisions of this Constitution shall be null and void". Accordingly, international treaties, conventions and agreements are of unquestionable significance, because they have constitutional status and hold second place in the order of precedence, above national laws.

10. Similarly, article 141 states: "International treaties that have been duly entered into and approved by Act of Congress and whose instruments of ratification have been exchanged or deposited shall form part of domestic law, with the rank specified in article 137".

11. In order for a treaty to enter into force in Paraguay, it must first have been ratified in accordance with the procedures laid down in the Constitution.

12. In addition to giving treaties precedence over national law, the Constitution stipulates that they must be ratified by an Act of Congress. In this way the treaty also becomes domestic law and the rights and obligations set out in the International Covenant may then be directly invoked in court by anyone who considers that any of his rights as established in the treaty have been affected. Although case law provides few relevant examples, the Government emphasizes that there is no impediment to the enforcement by the courts of international human rights law, provided it forms part of the wealth of Paraguay's law.

C. Authorities with jurisdiction affecting human rights

13. Paraguay has adopted the republican representative system of government. The new Constitution sets out all the basic human rights and provides for a number of mechanisms to protect and safeguard them.

14. To begin with, as in any system based on the rule of law, responsibility for safeguarding human rights and terminating any violation of those rights lies with the judiciary. The entire judiciary, from the justices of the peace to the Supreme Court of Justice and the Department of Public Prosecutions, are concerned with human rights, within their specific powers under positive law.

In particular, the Department of Public Prosecutions has focused its attention on ensuring compliance with constitutional guarantees, and in this connection is promoting the various proceedings under way before the various courts concerning complaints involving human rights. To this end, the Office of the State Attorney-General has decided to incorporate into its structure a prosecution department with special responsibility for human rights.

15. Secondly, in addition to approving laws and establishing a suitable legal framework for the protection of human rights, the Legislature has set up internal mechanisms to guarantee such protection. Each of the two Chambers of Parliament has a Human Rights Commission, made up of parliamentarians of different political views and, in many cases, headed by members of the opposition. For example, the Human Rights Commission of the Chamber of Deputies, established in 1989 by the Transition Parliament, issues opinions on any matter or project connected with promoting, protecting and legislating on human rights and indigenous affairs. In addition to its legislative task, the Commission has an equally important function which consists in receiving and processing the various complaints submitted by members of the public about violations of human rights and in providing the requisite solutions. In this regard, the Commission has a Legal Advice Office to advise and assist persons consulting the Commission or to initiate the corresponding private court action in the case of serious acts committed against human rights.

16. With regard to the Executive, apart from its functions in guaranteeing the security of individuals, specific institutional arrangements have already been made to promote and defend human rights. One example is the Directorate-General for Human Rights, which is part of the Ministry of Justice and Labour and has broad aims which include promoting, publicizing and protecting human rights.

17. Since Paraguay is a democratic country, the contribution by non-governmental organizations to protecting human rights is decisive and is supported by the Government.

D. Remedies available to an individual who claims that his rights have been violated

1. Remedies under the Constitution

18. Chapter XII, entitled "Constitutional Guarantees", provides for habeas corpus, and article 133 stipulates:

> "Application for this guarantee may be made by the person concerned, himself or by a third party, in due form, without need of power of attorney and to any court of first instance in the relevant judicial area.

> Habeas corpus shall be:
>
> 1. Preventive: so that anyone in imminent danger of being illegally deprived of his physical liberty may apply for consideration of the lawfulness of the circumstances which, in the opinion of the person concerned, constitute threats to his liberty, together with an order for termination of such restraints;
>
> 2. Reparative: so that anyone who has been illegally deprived of his liberty may apply for the circumstances to be rectified. The judge shall order the detainee to appear in court and also order a report from the public official or private agent who has detained him, within 24 hours following the application. In the event of failure to comply, the judge shall proceed to the place at which the person is being held and, at that place, shall determine the merits and order immediate release, in the same way as if the detainee had been brought before him in court and the report had been submitted. If there are no legal grounds for deprivation of liberty, the person shall be released immediately; in the event of a written order by the judicial authorities, the information shall be sent to the person ordering the detention;
>
> 3. General: so that anyone may request rectification of circumstances which are not covered by the two cases mentioned above and place restraints on the liberty or threaten the security of an individual. Similarly, application for this guarantee may be made in cases of physical, mental or moral violence that aggravate the circumstances of persons lawfully deprived of their liberty. The law shall regulate the various terms and conditions for habeas corpus, which shall apply even during a state of emergency. The procedure shall be summary and free of charge, and may be initiated automatically".

19. In addition to broadening the scope of habeas corpus, the Constitution allows for the applicant's request to be examined by any court of first instance. Under the previous Constitution, it had to be considered by the Supreme Court of Justice and it was not applicable during a state of siege.

20. Article 134 of the Constitution also guarantees the right of amparo (protection), in the following terms:

> "Anyone who, as a result of a manifestly unlawful act or omission by an authority or private individual, considers that he has been seriously harmed or is in imminent danger of being so harmed in regard to rights and guarantees set out in this Constitution or the law, and who, owing to the urgency of the case, cannot seek redress through the usual channels, may file an application for amparo to the competent court. The procedure shall be summary and free of charge and is a public right of action in the cases provided for by law.
>
> The court shall be entitled to safeguard the right or guarantee or immediately restore the proper legal situation. In matters pertaining to elections or political organizations, electoral courts shall have jurisdiction. An application for amparo may not be made in the course of

> judicial proceedings or in connection with acts by judicial bodies or during the elaboration, approval and enactment of laws. The law shall regulate the relevant procedure. Appeals may be made against sentences in connection with amparo".

21. Article 135 of the Constitution guarantees habeas data:

> "Any person may obtain information and data about himself or his property contained in official records or private records of a public character, and also learn what use is made of the information and data and their purpose.
>
> He may apply to the relevant court to update, correct or destroy them if they are erroneous or will unlawfully affect his rights".

22. As a result of this remedy, widely used by the people, the "Terror File" was discovered. This discovery is important not only from the historical standpoint but also in regard to legal proceedings. The documents in the file are being included in the various trials for torture, as irrefutable evidence against former leaders of the Alfredo Stroessner regime. With these documents, new proceedings are also being instituted.

23. Since the documents were discovered, five new trials have been started. This is possible as a result of the classification and microfilming work done by a team of document specialists, who have turned the "mountain" of documents into a properly arranged library. By means of habeas data, more than 100 victims of repression have been able to see their records and obtain belongings seized by the Stroessner regime's political police.

2. Remedies under the law on criminal procedure

24. Article 99 of the Code of Criminal Procedure states:

> "Anyone having legal capacity who witnesses the perpetration of an offence giving rise to the right for criminal proceedings to be taken, or who in any way learns of the perpetration of such an act, may report it to:
>
> (i) The competent court for examination proceedings;
>
> (ii) Officials of the Department of Public Prosecutions;
>
> (iii) District heads or police commissioners."

25. Article 115 of the Code of Criminal Procedure stipulates:

> "Judges receiving a complaint in conformity with all the requirements established in this Chapter shall be obliged to initiate the necessary procedure in order to verify the facts and the offenders, pursuant to the provisions of this Code.

> If the complaint is made to officials of the Department of Public Prosecutions, they shall immediately inform the examining magistrate so that he may initiate an inquiry.
>
> If it is made to district heads or police commissioners, they shall proceed as stipulated in the foregoing paragraph."

3. Remedies under the Code for Juveniles

26. Under the Code for Juveniles, Act No. 903 of 1981, complaints may be laid with the juvenile court of first instance for investigation of acts or omissions punishable under the Act if they were committed by children under 14 years of age, or if they relate to ill-treatment, punishment or improper treatment of persons under 20 years of age, or, in general juveniles who are in a dangerous situation.

E. Other measures adopted to guarantee implementation of the provisions of the Covenant

27. With the ratification of the International Covenant on Civil and Political Rights and other international treaties, the Paraguayan Government has displayed its firm resolve to ensure full respect for and observance of human rights, in accordance with the fundamental principles of freedom, justice and peace. Human rights are a matter of concern to the international community, and the Government supports the various international and regional human rights protection mechanisms.

28. The Republic of Paraguay has made every effort to secure a proper understanding of the provisions of the Covenant. To this end, the Directorate-General for Human Rights, part of the Ministry of Justice and Labour, has organized seminars, panels, talks and training days for teachers at various levels, in order to provide instruction on the topic, and on the contents of and adaptation to our particular situation, of the various international instruments ratified by our country, including the International Covenant on Civil and Political Rights. In addition, training is provided for officials of various public departments, such as the Office of the Attorney-General, the police and the Foreign Ministry and persons who, in one way or another, have to apply its principles in the performance of their duties. Moreover, the First Manual for Human Rights Curricula, worked out in cooperation with the Inter-American Human Rights Institute, has been devised and is now the first official text for formal human rights instruction in Paraguay.

29. Every year, the Directorate celebrates Human Rights Day and arranges various related events. For example, on 10 December 1992, the Directorate-General for Human Rights inaugurated a "Documentation Centre", which is available to students and to the public at large.

30. At the same time, TAREA, a non-governmental organization, has been conducting a campaign to publicize and distribute educational brochures on legal instruments on human rights, including the International Covenant on Civil and Political Rights.

II. INFORMATION RELATING TO THE IMPLEMENTATION OF ARTICLES 1 TO 27 OF THE COVENANT

Article 1

31. Paraguay accepts the principles contained in article 1 and, as stated in the preamble to the Constitution, it recognizes the dignity of the human being and is a member of the international community. Under the Constitution, it is free and independent and adopts a representative, participatory and pluralistic form of government, founded on the recognition of human dignity. In addition, sovereignty lies with the people and is exercised in accordance with the Constitution. Public authority is exercised by the people by suffrage and government is exercised by the Legislature, the Executive and the Judiciary in a system of separation, balance, coordination and mutual supervision.

32. Article 144 of the Constitution states that the Republic of Paraguay renounces war, but upholds the principle of self-defence. This declaration is compatible with the rights and obligations of Paraguay as a member of the United Nations and the Organization of American States and as a party to integration treaties.

33. In article 145, the Constitution recognizes a supranational legal order guaranteeing human rights, peace, justice, cooperation and political, economic, social and cultural development.

34. The Republic of Paraguay accepts international law and abides by the principles of national independence, the self-determination of peoples, legal equality as between States, solidarity and international cooperation, international protection of human rights, free navigation of international rivers, non-intervention, and condemns any form of dictatorship, colonialism or imperialism.

35. Paraguay has no colonies and does not administer any non-self-governing or trust territory.

Article 2

36. Respect for human dignity and non-discrimination are established by the Constitution. Both are guarantees set forth in articles 46 and 47, which establish that all the inhabitants of the Republic are equal in dignity and rights. No discrimination is allowed. The State also guarantees that all the inhabitants have equal access to the courts, that they are equal before the law and that they have equal access to non-elective public office, with no requirement other than ability.

37. The Constitution also provides, in article 117, that all citizens, without distinction as to sex, are entitled to participate in public affairs. Access by women to public office must also be promoted.

38. The question of discrimination on grounds of sex will be dealt with in greater detail in connection with article 3. Nevertheless, it is important to refer here to article 115 of the Constitution, paragraph 10 of which provides that agrarian reform will be encouraged with the participation of peasant women on an equal footing with men.

39. As regards nationality, the only difference between nationals and foreigners is in the entitlement to vote and the right to be elected in general elections. Article 120 states that: "All Paraguayan citizens without distinction who are resident in national territory and who are over 18 years of age shall be entitled to vote. Citizens shall be entitled to vote and to be elected, with no restriction other than those established by the Constitution and the law. All foreigners who are permanent residents shall have the same rights in municipal elections".

40. In that regard, article 2 of the Electoral Code established by Act No. 1/90 provides that all Paraguayan citizens resident in national territory and all foreigners who are permanent residents, without distinction, over 18 years of age, provided they meet all the requirements of the law and are entered in the Civil Register, shall be entitled to vote. Article 15, paragraph 1, of the same Code establishes the equality of all the political parties in law. Article 312 sets forth the regulations on canvassing and prohibits any political propaganda advocating discrimination on the grounds of class, race, sex or religion.

41. Fundamental human rights are also guaranteed for foreigners, whatever their nationality.

42. Article 73 of the Constitution establishes the right of everyone to a comprehensive education at all times. Article 74 guarantees the right to learn and equal opportunity of access, without discrimination, to the benefits of humanist culture, science and technology.

43. As to work, article 88 of the Constitution provides that there shall be no discrimination and lays down that no discrimination whatever shall be allowed between workers on ethnic grounds or on the basis of sex, age, religion, social status and political or trade union preferences. With reference to women, article 89, paragraph 1, provides that workers of either sex have the same labour rights and obligations, but that special protection shall be given to mothers.

44. Furthermore, article 283 of the Labour Code, established by Act No. 213/93, grants all workers and employers, without distinction as to sex or nationality and without the need for prior authorization, the right freely to establish organizations to examine, defend, promote and protect their professional interests. The same Code establishes that its provisions shall apply to all employers and workers, whether national or foreign.

45. As regards language, article 140 of the Constitution provides that Spanish and Guaraní are the two official languages of the Republic of Paraguay. Guaraní is the mother tongue of most of the rural population. These people subsequently learn Spanish at school, since the education system is based predominantly on that language. In the upper and middle strata of

the urban population, both in the capital and in major provincial cities, the language learnt and used in the home is Spanish, just as Guaraní is the first language generally used in the rural areas. In addition, article 77 of the Constitution guarantees instruction in the mother tongue and stipulates that teaching in the schools shall be provided in the pupil's mother tongue. It is also stipulated that instruction shall be provided to enable the pupil to learn and use both of the official languages of the Republic.

46. The Guaraní language which is the most widely used instrument of our culture, and because of a gradual awareness of that fact it has been declared an official language, together with Spanish, under the present Constitution. The Ministry of Education and Worship has included it in all the curricula at the primary, secondary and higher levels. The National University of Asunción can award a degree in Guaraní.

47. In the social field, the Constitution also stipulates that all children are equal before the law (art. 52, para. 4). Article 2591 of the Civil Code relating to inheritance for children born out of wedlock and provides that they have the same rights as those born in wedlock to inherit the parent's personal assets, but not to the joint property, in respect of which they shall be entitled to a half of the portion due to the children born in wedlock.

48. With regard to disabled persons, under article 58 of the Constitution, persons with special needs are guaranteed the same health care, education, recreation and vocational training to ensure their full social integration. To that end, special policies shall be formulated to ensure preventive health care, treatment, rehabilitation and integration for the persons who suffer physical, psychological and sensory disability and they shall be given the necessary care. They enjoy the same rights as those granted by the Constitution to all the inhabitants of the Republic, on a basis of equal opportunity, in order to offset their disadvantages.

49. The legislation on the subject is comprehensive. The law establishing the National Institute for the Protection of Persons with Special Needs (INPRO) contains the obligation to provide integral care on a non-discriminatory basis, to assist them in such matters as assistance in court, health care, work, rehabilitation, education, vocational counselling and training, and housing. The Health Code envisages comprehensive and coordinated activities for the promotion, protection, recovery and rehabilitation of their physical, mental and social well-being.

50. INPRO is an official agency providing medical and social assistance to disabled persons. Various private organizations, some of them subsidized, also provide assistance in the fields of health, education and work. These institutions' coverage is limited to the capital and the major urban centres, as a result of which disabled persons who live in Paraguay's interior lack access to the services and programmes providing comprehensive care.

51. Efforts in various spheres by the disabled themselves have made it possible for them to participate in national life. They are represented on the municipal council of the City of Asunción, through which they work to improve health services, provide job training and promote social integration, including the cultural development of handicapped persons.

52. In 1992, the United Nations Development Programme (UNDP) and the Department of Charity and Social Welfare (DIBEN) worked together to formulate a 1992-1995 plan of comprehensive action for disabled persons. The object of this plan is to reach out to the people in the interior of the country and to create and/or strengthen institutions and human resources as well as encourage the formation of associations, the participation and training of the persons directly affected and their families. The self-management of institutions and persons affected and the decentralizing process are the linchpin of the plan of action.

53. The social security system, also includes rehabilitation and invalidity benefits for the persons which it covers. In this connection, mention should be made of the services provided by the Social Welfare Institute (IPS), and its different regional centres, although the users frequently indicate that their services are insufficient.

54. The law establishing the Department of Charity and Social Welfare (DIBEN) is intended to meet the human needs of groups without adequate financial resources and provide assistance to persons with special needs, and the law establishing the rights and privileges of the disabled, whose title is not the most apt, reiterates some principles, such as non-discrimination, introduces new elements and provides for free health, education and labour benefits.

Article 3

55. Article 48 of the Constitution guarantees the equality of men and women and stipulates that they have equal civil and political, social, economic and cultural rights. The State shall promote the conditions and create the appropriate mechanisms to ensure that there is real and effective equality, by removing any obstacles which prevent or hinder the exercise of that equality, and by facilitating or encouraging the participation of women in all spheres of national life. In the chapter entitled "Family Rights", it is established that every person has the right to found and raise a family, and that the man and the woman have equal rights and obligations in that regard.

56. The Civil Code adopted in 1985, which took effect in 1987, contained discrimination against women, since it did not accord them the same rights as the man in family relationships, marriage and de facto unions. These limitations were removed under Act No. 1 of 15 July 1992, which partly amended the Civil Code. Article 1 of the Code establishes that men and women have equal capacity to enjoy and exercise their civil rights, whatever their marital status.

57. With regard to marriage, article 6 of Act No. 1 specifies that: "In the home, the man and the woman shall have equal duties, rights and responsibilities, regardless of their financial contribution to the upkeep of the joint home. They owe each other mutual respect, consideration, fidelity and assistance." Article 9 deals with the care and maintenance of the home and provides that it is the joint responsibility of both spouses.

58. As to a married woman's surname, article 10 establishes that a married woman may use her husband's surname after her own. The husband shall have the same option to add his wife's surname after his own.

59. Under article 15, both spouses have the duty and the right to participate in running the household. Both have the responsibility to decide on questions pertaining to the household's economics.

60. Under article 12, children born in wedlock shall bear the first surname of each parent and the order of those surnames shall be decided by the parents by common consent. The second part of the articles establishes that the first surname of the children born out of wedlock shall be that of the parent who has first acknowledged them.

61. Article 40 establishes that the management and administration of community property shall be the responsibility of both spouses, jointly or separately.

62. With regard to cohabitation or de facto union, article 86 establishes that, after a 10-year period, the persons concerned may appear before a civil registry official or a local justice of the peace and register their union, which will be deemed to be fully equivalent to a legal marriage, for purposes of inheritance, and the children of the union shall be considered as having been born in wedlock.

63. With regard to divorce, Act No. 45/91 authorizes remarriage within one year and terminates the joint ownership of community property. Under the terms of the Act, the spouses lose their right to inherit from each other, the divorced woman may not use the surname of her former husband who has been declared or is deemed to be guilty, and is not entitled to ask the other for maintenance and the innocent spouse retains the right to maintenance.

64. The Labour Code contains a section on women, in which it declares that there shall be no discrimination on grounds of sex. Article 128 states that: "Women enjoy the same labour rights and have the same obligations as men".

65. Under the terms of articles 2 and 3 of the Labour Code, employment legislation applies to all workers, whether manual or non-manual, Paraguayan citizens or foreigners. Furthermore, the rights established in the Labour Code may not be waived, compromised or limited by contract. In addition, the employees of the State, municipal authorities and autonomous corporations are governed not by the labour laws but by the Public Officials Act, (Act No. 200).

66. The Labour Code contains a specific chapter on the statutory regulations governing domestic service, which is the prime source of employment for women. The jobs of domestic workers are less protected than others, and this therefore constitutes a form of discrimination affecting the persons concerned. Thus, domestic workers are excluded from the minimum wage rules.

67. Article 151 of the Labour Code provides that: "The payment in cash of domestic workers must not be lower than 40 per cent of the minimum wage ...". Furthermore, article 152 establishes that unless otherwise proven, it shall be presumed that the contractually fixed remuneration of domestic workers includes meals and accommodation, in addition to payment in cash.

68. With respect to women's earnings, the Labour Code lays down that every worker must receive at least the minimum wage and it prohibits discrimination on various grounds, including the sex of the worker concerned.

69. With respect to social security and leave of absence, under the Labour Code, the State is required to cover workers who are entitled to leave of absence. However, problems arise with the practice adopted by the Institute of Social Welfare, whereby the wife or cohabitee of an insured male member is in turn insured by him, but the husband or cohabitee of an insured female member is not insured by her in respect of medical care under article 30 of Act No. 1816, updated by the Decree Law No. 375.

70. Regarding old-age pension, every male or female insured member who has reached 60 years of age and paid a minimum of 750 weeks' contributions is entitled to an old-age pension. Male and female workers normally become eligible for retirement pensions on reaching the age of 60 if they have completed at least 20 years' recognized service, or age 55 with 25 years' recognized service. Article 62, paragraph J, of the Labour Code makes provision for two days of paternity leave.

71. With regard to maternity leave, article 135 makes provision for women to take antenatal and post-natal leave, on presentation of a medical certificate. Benefits are paid by the social security system.

72. In the field of health and employment, article 130 of the Labour Code provides that women shall be barred from undertaking any industrial night work, unhealthy or dangerous work after 10 p.m. and from working overtime if this constitutes a risk to the health of the woman or the unborn child, or during lactation. Furthermore, overtime shall in no circumstances be permitted for women and for males over 14 but under 18 years of age.

73. The Directorate for the Social Advancement of Working Women, attached to the Ministry of Justice and Labour, was set up under Decree No. 17,161 with the aim of preventing employment discrimination against women. Its achievements and resources have been very limited to date, although from a legal viewpoint its functions, as set out in article 2 are extremely important. They are:

(a) To undertake all kinds of action for comprehensive training of working women;

(b) To ensure that the laws dealing with women's employment are complied with and that women's employment is not subject to discriminatory practices;

(c) To publicize any laws that are concerned with working women;

(d) To conduct studies into the training and use of female labour.

74. It is possibly in criminal law that most progress has been achieved since Paraguay's ratification of the Convention on the Elimination of All Forms of Discrimination against Women in 1986.

75. Thus, the Paraguayan Penal Code promulgated in 1914 defined criminal offences differently, depending on whether the offender was male or female.

76. Such was the case with adultery. Under article 296, a man was considered adulterous only if he kept a concubine within the marital home or a mistress outside it, causing public outrage, and he was liable to 10 to 20 months' imprisonment and suspension of marital authority for the duration of his sentence, whereas a woman committed adultery if she had sexual intercourse with a man who was not her husband. Under article 295, both she and her lover (even if only an occasional partner) would have been sentenced to one to three years' imprisonment.

77. However, the discrimination went even further, for under the terms of article 21, paragraph 7, of the Penal Code, a man who unexpectedly discovered his wife in the act of committing adultery, and then killed, injured or assaulted her or her accomplice was not liable to any penalty unless the husband's wilful and flagrant abandonment of his wife had rendered her conduct excusable. In other words, men were permitted to kill.

78. Article 21, paragraph 7, and articles 295 and 296 were repealed by Act No. 104/90. Adultery is no longer a criminal offence in Paraguay and no one is permitted to kill, although article 1 does state the following: "Either spouse who unexpectedly discovers the other in the act of sexual intercourse with a third party and kills, injures or assaults the other spouse or party shall be liable to one half of the punishment applying to the offence concerned, unless the spouses are separated."

79. Areas in which progress has not been made are the criminal acts of rape and abduction, in the first place because they are still a matter for public criminal prosecution, since they are regarded as offences against public propriety and decency, and secondly, because a discriminatory classification of women who have been raped and abducted still exists, harsher penalties being applied in the case of married women.

80. This is because the offence is regarded as an insult against the husband, something which cannot arise in the case of unmarried women. These aspects can be seen in articles 2 and 6 of Act No. 104/90:

"(a) Article 2. Article 315 of the Penal Code is amended to read as follows:

Rape shall be penalized by:

1. Between 18 to 24 years' imprisonment if committed against a person of either sex who is less than 11 years old;

2. Between 18 to 20 years' imprisonment if committed against a person of either sex who is more than 11 but less than 16 years old;

> 3. Between 8 and 12 years' imprisonment if committed against a married woman; and
>
> 4. Between 6 and 10 years' imprisonment in all other cases.

If the rape results in the death of the victim, or if the offence is perpetrated by more than one person on the same occasion, the sentence shall be increased by one half;

(b) Article 6. Article 325 of the Penal Code is amended to read as follows:

> Abduction shall be penalized by:
>
> 1. Between three and six years' imprisonment, if the victim is less than 12 years old;
>
> 2. Between two and four years' imprisonment, if the victim is less than 15 years old or a married woman; and
>
> 3. Between one and three years' imprisonment in all other cases.

In the case referred to in paragraph 1 and the first part of paragraph 2 of this article, the consent of the victim shall not exempt the convicted persons from enforcement of the penalty.

81. Abortion is a very serious problem in Paraguay, because according to information from the Ministry of Public Health and Social Welfare, the number of deaths in 1992 was highest among expectant mothers. Different penalties are enforced, depending on the way in which the abortion is carried out and the consequences, but it is only the woman and the abortionist, and not the male progenitor, who are punished.

82. As far as the participation of women in political life is concerned, in 1961, in Paraguay the political rights of women were established on equal terms with those of men. In the political field, there is no legal discrimination on the grounds of sex, and the only statutory provision to promote equality is contained in the Electoral Code, Act No. 1/90, which is important in that it recognizes the existence of discrimination on the grounds of gender in the political party power structure and shows the definite intention of the Legislature to remove the obstacles facing women.

83. Article 34 of the Electoral Code stipulates that:

> "The party's organizational charter and regulations shall lay down the rules governing its organization and operation. It is the party's basic law and must, inter alia, set forth the following: appropriate measures for promoting women to elective office. Thus, women, whatever their marital status, are entitled to vote and stand for election."

84. Women have been excluded from executive political posts both at the State level and in the political parties, the trade unions and professional associations. But here too, since the emergence of democracy, some important changes can be observed. For example, article 117 of the Constitution, in the chapter on political rights and duties provides that:

> "All citizens, without distinction as to sex, are entitled to participate in public affairs, either directly or through their representatives, in the manner prescribed by the Constitution and the law. The access of women to public office shall be encouraged."

85. In regard to the Executive, it is noteworthy that in September 1992 Act No. 34 was ratified and established the Women's Secretariat, with the rank of a ministry in the Office of the President of the Republic. It has provided a valuable instrument for developing public policies against discrimination and is headed by the only woman who has ever reached ministerial rank since the new Government took office in August this year. She was appointed this year as the only woman deputy-minister among 20 deputy-ministers.

86. Other encouraging developments have been the establishment of a women's police unit attached to Police Station No. 12, in Asunción, and the Physical and Sexual Abuse Prevention Campaign promoted by the three branches of government and numerous private organizations. Also, women's issues have recently been included as a research topic in the Population and Development Department of the Economics Faculty at the National University of Asunción, and the Office for Women's Affairs was set up in January 1992 in the municipality of Asunción.

87. Paraguay is a unitary State, divided politically and administratively into departments. In the entire history of Paraguay no woman has ever been appointed to the post of government delegate. In the first direct elections for mayors of municipalities, held in May and June 1991, 12 women and 194 men were elected, in other words, 5.8 per cent of the mayors are women.

88. In the Legislature branch, until the new Electoral Code was ratified in 1990, the method used for allocating seats was the "majority with bonus" system, in other words, the party gaining a simple majority was awarded two thirds of the seats.

89. At the time of the fall of General Stroessner's Government, there were two women Senators out of a total of 36 (i.e. 6 per cent) and a further two women figured among the 72 Deputies (i.e. 3 per cent). Overall, female participation stood at 4 per cent. The political change has not brought about any major advances in the representation of women in Congress. Women account for only 5 per cent of the Parliament elected on 1 May 1989. In the general elections held in 1993, three women were elected out of a total of 45 Senators and two women out of the 80 Deputies throughout the country.

90. In the Judiciary, no woman has ever been a member of the Supreme Court of Justice. However, it is in the judiciary that progress has been achieved over the last decade. It was not until 1980 that a woman became a judge of first instance. In the Attorney-General's Office, to date no woman has occupied the post of State Attorney-General. As to Public Prosecutors, one woman held such

an appointment in 1950, when there had only been two such prosecutors and consequently the female representation was 50 per cent. Today, out of 21 public prosecutors 8 are women.

91. As regards participation by women, there have historically been no differences among the political parties, women's representation at party decision-making level varying between 3 and 8 per cent. In 1992, the National Republican Association held an assembly at which it decided to amend the regulations of the Colorado Party and it was established that the percentage of women in their lists of candidates should be 20 per cent. It is the only political party which establishes advantages for women.

92. Since 1988, the percentage of women party executives in the Authentic Radical Liberal Party (PLRA) has been increasing. In 1988, it was 13 per cent, falling to 10 per cent in 1989 and rising to 20 per cent in 1991. In the Christian Democratic Party (PDC) it reached 13 per cent in 1988, 30 per cent in 1989 and 9 per cent in 1991, while the level of such representation on the National Executive Committee of the Febrerista Revolutionary Party (PRF) is 4 per cent. The Popular Democratic Party (PDP) has maintained a 33 per cent level of women's representation on its National Council. The Workers' Party (PT), founded and recognized in 1989, is the only party to have a woman leader and 36 per cent of its Central Committee members are women. None of these parties managed to gain 1 per cent of the votes in any constituency in the municipal elections of 26 May 1991, in which they put forward candidates for the first time. Nor did the PDC win any seats on any municipal council.

93. In recent times, independent candidates have stood in 90 municipalities. One successfully contested the mayorship of Asunción and one third of the Asunción municipal council candidates were women.

94. In Paraguay, there are 402 trade unions in all, of which 295 are affiliated to the existing trade union federations and 107 are independent. The Unified Federation of Workers (CUT) was founded in August 1989 and has the largest membership, totalling 26,167, of whom 19,791 are men and 6,376 are women. The Paraguayan Workers' Confederation (CPT), which was founded in 1951, has 22,990 members, of whom 18,258 are men and 4,732 are women. The National Workers' Federation (CNT) has a membership of 9,630, comprising 6,605 men and 3,025 women.

Article 4

95. Under the Stroessner Government, a state of emergency, known at that time as a state of siege, was operative almost continuously during the Government's successive terms of office. It was systematic and could even be described as routine, for every six months the Executive told the population and Parliament that the state of siege was extended. One of the main failings or defects of the state of siege in Paraguay was the absence of any parliamentary supervision (to introduce it or while it was in force), and the absence of effective ways and means to provide suitable protection of human rights (owing to the suspension of habeas corpus, etc.), apart from the many abuses it produced because it went on without a break.

96. Furthermore, Act No. 294/55, "Defence of Democracy", and Act No. 209/70, "Defence of Public Order and Freedom of the Individual", which were in force during the dictatorship and were abrogated immediately after the advent of democracy, involved excesses and were detrimental to the freedom of the individual, producing situations in which many people were detained, allegedly on the grounds that they had contravened those Acts. The excesses and the strict use of these Acts was prejudicial to the freedom of the individual because of the abuses committed by the authorities at the time and the unrestricted power of the Executive to place restraints on the freedom of the inhabitants of Paraguay.

97. The state of siege was expressly authorized in the 1967 Constitution, but since it was lifted in February 1989 the constitutional Government has never used it in the process of transition to democracy. With the adoption of a new Constitution, on 20 June 1992, the section on "State of Emergency" is contained in title III, in which article 288, which establishes that Congress or the Executive have the power to declare a state of emergency throughout all or part of the territory of the Republic.

98. During a state of emergency, the Executive is entitled to issue a decree to detain persons and prevent them from taking part in certain events, transfer them from one place to another in the Republic and prohibit public meetings and demonstrations. This procedure is in keeping with the President's powers under article 238 (7) of the Constitution to declare a state of national defence or to agree on peace terms in the event of external aggression, with the prior authorization of Congress. Article 288 stipulates:

> "In the event of an international armed conflict, whether or not formally declared, or serious internal disturbance placing in imminent danger the authority of this Constitution or the regular functioning of the organs established by it, Congress or the Executive may declare a state of emergency in all or part of the national territory, for a maximum period of 60 days. If the declaration is made by the Executive, the measure shall be approved or rejected by Congress within a period of 48 hours.
>
> The 60-day limit may be extended for successive periods of up to 30 days; for which an absolute majority of both Chambers shall be required.
>
> When Parliament is in recess, the Executive may declare a state of emergency for a single period of not more than 30 days, but must within eight days submit the declaration for approval or rejection by Congress, which shall be convened de jure for a special session solely for that purpose.
>
> The decree or law declaring the state of emergency must set forth the grounds and facts on which it is based, the length of time it will remain in force, the territory affected and the rights that it restricts.

> While the state of emergency is in force, the Executive may order the following measures only by decree and on a case-by-case basis: the detention of persons suspected of having participated in any acts of this nature, their transfer from one place to another within the Republic, and the prohibition or restriction of public meetings and demonstrations.
>
> In all cases, suspects will have the option of leaving the country.
>
> The Executive will immediately notify the Supreme Court of Justice of the detainees held under the state of emergency and where they are being held or have been taken, in order for a judicial inspection to be made.
>
> Persons detained under the state of emergency must be held in clean and healthy facilities not intended for ordinary offenders or must remain under house arrest. Transfers must always be to clean and inhabited places.
>
> The state of emergency may not interrupt the functioning of the authorities of the State, the applicability of the Constitution or, specifically, habeas corpus.
>
> Congress may at any time, by an absolute majority, order the state of emergency to be lifted if it considers that the reasons for the declaration have ceased.
>
> Once the state of emergency has ended, the Executive is required to inform Congress, within a period of not more than five days, of the action that has been taken while the state of emergency was in force."

99. This new wording suitably protects the criteria of legality established in the international system, namely, proclamation, notification, exceptional threat, proportionality, non-discrimination, compatibility with the democratic system, inalienability of certain rights.

100. As far as the powers of the Armed Forces and the Police are concerned, a state of emergency is constitutional but no regulations have been issued therefor and, as long as it is in force, the Armed Forces and the Police, as public authorities, act in accordance with the provisions of the Constitution and the orders of the Executive.

Article 5

101. The Constitution includes provisions intended to prevent any activity by groups or officials involving elimination of the rights and freedoms recognized in the Covenant. In the preamble, for example, it recognizes human dignity for the purposes of ensuring freedom, equality and justice. In this regard, article 173 states:

> "The Armed Forces are a national institution subject to the authorities of the State and to the provisions of this Constitution and the law. Their task is to safeguard the territorial integrity of the country and defend the lawfully constituted authorities, in accordance with this Constitution and the laws. Their method of organization and members shall be determined by law.
>
> Serving members of the Armed Forces shall act in accordance with the laws and regulations and may not join any political party or movement or engage in any type of political activity."

102. Article 175 establishes that the Police are a professional body that comes under the Executive and are responsible for internal law and order.

103. The Constitution recognizes a legal system in which treaties hold second place, after the Constitution itself.

Article 6

104. The Constitution has incorporated a number of the guarantees set out in the Covenant and the Universal Declaration of Human Rights. For example, the right to life is a basic human right and is not subject to any restriction whatsoever, even in emergency situations, and it is safeguarded in article 4, paragraph 1, which states: "The right to life is inherent in the human being. His general protection is guaranteed from the time of conception."

105. The Penal Code also contains provisions protecting life, and it characterises deprivation of the life of a human being, including abortion, as an offence. In chapter XIII, the Code contains a number of articles (334-368) on offences against the life, integrity and health of individuals.

106. In this regard, article 334 of the Code stipulates that anyone who, with criminal intent, takes the life of another human being over the age of three days shall be liable to 6 to 12 years' imprisonment.

107. Article 337 specifies that homicide is regarded as committed in aggravating circumstances and entails a penalty of 15 to 25 years' imprisonment in the following cases: (a) against the person of the spouse, brothers or sisters or legitimate or natural ascendant or descendant relatives; (b) with premeditation; (c) with cruelty and (d) through instincts of brutal ferocity alone.

108. Article 340 states that 4 to 10 years' imprisonment shall apply to anyone who wittingly and with criminal intent inoculates another person with a disease deemed by medical science to be incurable or necessarily fatal.

109. Article 341 deals with injuries and stipulates penalties that depend on whether the harm has led to permanent damage to a sense or organ, a permanent speech impediment, permanent disfigurement or danger of death (two to four years' imprisonment). If, as a result of the damage, the act has caused definitely or probably incurable mental or physical illness or the loss or non-use of a sense or an important limb or organ, the penalty is two to six years' imprisonment.

110. Article 347 specifies that a mother or her closest relatives who, in order to conceal her dishonour, takes the life of an illegitimate newborn child, immediately after birth or within three days, is liable to two to four years' imprisonment. Other than stipulated in this article, anyone who kills a newborn child is charged with murder.

111. Abortion is also considered an offence in Paraguay and the Penal Code stipulates 15 to 30 months' imprisonment for a woman who terminates her pregnancy by her own methods or by a third party with her consent. If, as a result of the methods used for the abortion or as a result of the abortion itself, the woman dies, the penalty is four to six years. If the methods used for the abortion are more dangerous than those agreed to by the woman or if they cause her death, the penalty is six to eight years' imprisonment. Penalties are also specified for anyone who, with criminal intent, uses violence to cause a woman to abort without her consent, and also if the abortion leads to the woman's death.

112. It is regarded as an aggravating circumstance and the penalty is increased by 50 per cent if the guilty person is the husband. Such a penalty also applies to physicians, surgeons, unqualified medical practitioners, midwives, pharmacists and their assistants, manufacturers or salesmen of chemical products and students of medicine who have knowingly supplied or used the methods which have caused the abortion or brought about the death.

113. However, responsibility does not apply under the Penal Code if it is proved that the abortion was practised to save the life of a woman endangered by the pregnancy or the childbirth. A fine is also stipulated for pharmacists who sell abortifacients without a doctor's prescription and also for a doctor who prescribes abortifacients without any specific reason. The fine is higher if the abortifacient is sold to a woman in a late stage of pregnancy.

114. According to data supplied by the Ministry of Public Health and Social Welfare, in 1992 abortion accounted for the highest number of deaths among mothers (28 per cent). Next came toxaemia, a complication of pregnancy, which accounts for 21 per cent of deaths. Haemorrhage accounts for 16 per cent, sepsis 10 per cent and other complications represent 24 per cent of deaths among mothers. According to the records, abortion is the first cause of death among women of child-bearing age. In addition, local records do not distinguish between abortions and miscarriages.

115. As to the health situation, data from the Ministry of Public Health and Social Welfare's Department of Biostatistics show that 8.5 per cent of the population aged 10 to 19 die from infectious or parasitic disease.

116. The five main causes of death among children aged one to four are pneumonia, diarrhoea, meningitis, undernourishment and anaemia, and the infant mortality rate is 40 per 1,000 live births, according to data from the Ministry of Public Health and Social Welfare. The death rate for children under one year of age is still very high and attributable to the following causes: injuries caused during delivery, diarrhoea, congenital pneumonia, septicaemia, neonatal infections, undernourishment and anaemia, meningitis and tetanus.

117. Although the Ministry of Public Health and Social Welfare has given priority to mother and child care, difficulties are still being experienced in providing country-wide coverage. A total of 64.4 per cent of the population is registered with departments of the Ministry of Public Health and Social Welfare, but no data are available on the percentage of the population with actual access to the Ministry's services. A number of health centres have mother and child units.

118. As far as measures to cut down infant mortality are concerned, the expanded acute diarrhoea control and immunization programme has been the one with the greatest impact in terms of coverage with basic vaccines.

119. For example, as a comparison between 1991 and 1992, in 1991 the DPT coverage was 94 per cent, oral polio 94.6 per cent, measles 73.6 per cent, BCG (tuberculosis) 93.6 per cent and TT (tetanus toxoid) 70.8 per cent. The coverage increased notably in 1992, namely 97.3 per cent for DPT; 98.3 per cent for oral polio; 86 per cent for measles; 99 per cent for BCG; and 86.6 per cent for TT.

120. Acute diarrhoeic illness control means that such illnesses are no longer the first cause of infant mortality and death rates among children under five. The spread of oral rehydration therapy (ORT) is also helped.

121. The United Nations Development Programme has devised a human development project to improve living conditions among the most needy sectors of the population, particularly children. This project has already assisted more than one million children of school age with food supplements and 1,000 women's committees have been organized to form a national network. The expected results are a reduction in the incidence of goitre and an improvement in the rates of enrolment and school drop-out rate.

122. The Mother and Child Department and non-governmental organizations will implement the Ministry of Public Health and Social Welfare's Mother and Child Programme. The Programme, recently approved by UNFPA for 1993-1996, will have country-wide coverage.

123. Paraguay's main nutrition problems are, first, lack of micronutrients (iron and iodine deficiency), and second, calorie/protein undernourishment. Anaemia from iron deficiency and endemic goitre from iodine deficiency are the nutrition problems that cause the highest sickness rates in the country, and they especially affect the economically vulnerable sector of the population.

124. To raise the nutritional level, the Ministry of Public Health and Social Welfare, with UNICEF's support, is carrying out a number of programmes to monitor these deficiencies.

125. In this connection, the national iodine deficiency disorders (IDD) prevention programme includes (a) salt iodization; (b) iodine oil capsule supplements for vulnerable groups (children and pregnant women); and (c) education of the population.

126. The school parasitosis and parasito-nutritional anaemia control programme includes: (a) training pupils and parents in schools in the health regions to prevent intestinal parasitosis (personal hygiene, environmental sanitation);

(b) providing anti-parasite medicine (albendazol) and iron sulphate for all school children; and (c) food education and training in school gardens (run by the Agricultural Extension Service (SCAG)).

127. Food aid includes the Food and Nutritional Education Programme (PAEN), which is supported by the World Food Programme and intended for vulnerable groups.

128. The environment is covered in the Constitution by articles 7 and 8, which establish the right of everyone to a healthy environment. It is also stipulated that preservation, rehabilitation and improvement of the environment are matters of social interest. Anyone threatened with being deprived of that right may refer to the authorities and demand protection or intervention to prevent harm.

129. The manufacture, assembly, importation, marketing, possession and use of nuclear, chemical and biological weapons and the introduction of toxic waste into Paraguay are also prohibited.

130. The law also penalizes ecological offences, which give rise to compensation.

131. With reference to action taken, the Ministry of Agriculture has established the National Forestry Service specifically to implement the National Reforestation Programme, and it includes a National Parks Division. This work has to be done in stages intended to manage the natural environment in keeping with the population's needs regarding recreation, education and also research into flora and fauna.

132. The Convention on the Prevention and Punishment of the Crime of Genocide has been signed by Paraguay but has yet to be ratified.

133. The 1967 Constitution did not refer specifically to the death penalty. The 1992 Constitution clearly states in article 4 that: "... the death penalty is abolished ...". Under our anachronistic but still operative criminal law, the Executive may pardon the convicted person and commute the sentence to 30 years' imprisonment.

134. According to statistics supplied by the Directorate-General of Penal Institutions, in 1985 there was one case of a person sentenced to 30 years' imprisonment; in 1986 four new cases; 1988 one case; in 1989 four cases; in 1990 one case and in 1991 two cases. In 1992 and 1993 there were no new cases.

135. The Penal Code stipulates that the death penalty cannot be imposed on persons under the age of 22 and must be commuted to 30 years' imprisonment.

136. A pardon or commutation of the sentence does not entail extinction of civil liability for the offence. The sole effect of pardon by the aggrieved party is to exempt the guilty party from payment of monetary penalties.

137. It should be noted that a draft Penal Code is now before Parliament and chapter XII covers offences against human rights, including offences such as torture, genocide and others.

138. As already mentioned, the Constitution adopted in 1992 has abolished the death penalty and hence this paragraph of the Covenant does not apply.

Article 7

139. The first part of article 7 of the Covenant has constitutional status in the Republic of Paraguay. For example, article 5 of the Constitution stipulates that: "No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment", and goes on to say "Genocide and torture and forcible disappearance of persons, abduction and homicide for political reasons shall be imprescriptible". In this way, the Constitution stipulates that torture does not fall under the statute of limitations.

140. To strengthen the rights of the individual still more, the Constitution establishes the general framework in which the State must operate, specifying guarantees for the inhabitants of the country:

(a) Article 9 states that "Everyone has the right to protection of his freedom and security. No one is compelled to do anything not specified by law or deprived of anything not prohibited by law";

(b) Article 11 stipulates: "No one shall be deprived of his physical freedom or tried except for the reasons and in the circumstances established by this Constitution and the law";

(c) Article 12: "No one shall be arrested or detained without a written warrant from the competent authority, unless he is caught in the act of committing an offence which carries a custodial sentence".

141. The article goes on to enumerate the rights of the detainee: the right to be informed of the reason for arrest at the time of his arrest; for the arrest to be reported to his family; for him to be kept freely available for communication; for him to have the services of an interpreter if necessary, and for him to be brought before the judge within not more than 24 hours. The subsequent articles guarantee procedural rights: restrictions on making a statement; pre-trial detention; the purpose of the penalties; the imprisonment of persons, publicizing the proceedings, and matters concerning evidence.

142. The safeguards for people who live in Paraguay are based on fundamental principles established in the legislation of all democratic countries. Since the Constitution is based entirely on democratic principles, guarantees have been written into the various articles of the Constitution, and so all domestic legislation conforms to the principles established in it and are in keeping with its implementation.

143. The Republic of Paraguay ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1990 and it is now being incorporated into national law. The same year, it acceded to the Inter-American Convention to Prevent and Punish Torture.

Torture as an offence

144. Paraguayan positive law has not yet incorporated torture as an offence in accordance with the definition in article 1 of the Convention, but it will be regarded as criminal conduct in the forthcoming reform of the Penal Code, which will be strictly applied.

145. Nevertheless, penalties in criminal law in general do apply in cases of torture. Article 174 of the Code relates to abuse of authority and stipulates a penalty of two to six months' imprisonment for any public official who, abusing his office, perpetrates or orders in violation of the rights of third parties, any arbitrary act or unnecessary or unlawful harshness or coercion, where the act does not constitute a more serious offence. If the offence is committed out of vengeance, the penalty is doubled.

146. Article 31 deals with aggravating circumstances of criminal responsibility: deliberately increasing the effects of the offence by causing unnecessary harm in executing it; misusing superiority in terms of sex, age, strength or other circumstances prejudicial to the victim; when the guilty party has more numerous and important reasons for observing the law or if the duties breached are more imperative and the guilty party is able clearly to understand those reasons and duties; and when the desires or passions that impelled the perpetrator are unusually or exceptionally perverted or dangerous.

147. Under article 37, persons who associate to commit an offence are deemed to be abettors. Consequently, all the associates, whether or not they have taken a direct part in perpetrating the punishable act, are to be held liable for the offence committed, as principals.

148. Articles 274, 275 and 278 of the Penal Code relate to offences against constitutional guarantees. For example, article 274 stipulates a penalty of three to six months' imprisonment for anyone who, in cases other than those laid down by law or in breach of the prohibitions established by law, arrests, detains or abducts another person or deprives him of his freedom.

149. Under article 275, the penalty stipulated in article 274 is increased by 12 to 18 months:

(a) If the offence was committed with the use of violence, intimidation or ill-treatment or against a person or a child under the age of 12;

(b) If it was committed by a public official or by some other person lawfully authorized to perform a public service.

150. Article 278 relates to the responsibility of a public or military official who admits to prison anyone without an order from the competent authority or refuses to obey a release order issued by the authority. The penalty for the guilty party is as stipulated in article 274, together with suspension for up to six months.

Prison system

151. The legal provisions regulating treatment and living conditions in prisons are contained in Act No. 210/70. The principal purpose of the Paraguayan prison system is to keep in custody untried prisoners while their alleged involvement in an offence is being investigated and also persons who have been sentenced to imprisonment. In connection with prison practice, it may be said that the purpose of deprivation of freedom is simply to ensure that the untried prisoner is available and to separate him from society if he has been convicted.

152. The Constitution, to which the Prisons Act is to be adapted, establishes in article 20 that: "The purpose of custodial penalties shall be to rehabilitate convicted prisoners and to protect society. The penalties of confiscation of property and exile are prohibited".

153. Act No. 210 establishes in article 3 that: "Treatment with a view to the social rehabilitation of the prisoner shall be comprehensive and shall be of an educational, spiritual, therapeutic, assistance-oriented and disciplinary character".

154. Article 4 states: "The prisoner shall be required to comply with the prison regime to which he is subject. This regime shall be free of any violence, torture, ill-treatment or acts or procedures which involve suffering, humiliation or taunting of the prisoner. Any prison officer who orders, perpetrates or tolerates such excesses shall be held responsible and shall be liable to the relevant provisions of the Penal Code, without prejudice to any disciplinary penalties applicable."

155. Article 13 stipulates that: "In prison establishments account shall be taken of the requirements of hygiene as regards space, light, ventilation and sanitary facilities, in accordance with the standards of preventive medicine for the purposes of the preservation and improvement of the inmate's physical or mental health".

156. The perpetration of an act injurious to a person's physical integrity does not go unpunished, proof being the fact that, at the present time, the Paraguayan courts are investigating numerous cases of human rights offences committed during the regime that was overthrown in February 1989, and the new cases reported of ill-treatment in police and prison establishments. The purpose of judicial inquiries is to clear up the facts and, where appropriate, punish the perpetrator(s) and accomplices and accessories.

157. For example, in one case a large group of prisoners laid a complaint of physical ill-treatment and a case was brought against the Director of Penal Institutions and a number of officials charged with being responsible for the acts. An arrest warrant was issued against the Director himself and other prison guards. In addition, the administrative authorities ordered restructuring of the prisons under new authorities.

158. Again, in the Mario Raúl Shaerer Prono case, the court of first instance sentenced the persons responsible for the death that occurred in the Police Investigations Department to 25 years' imprisonment and an accomplice to five

years. The evidence produced at the trial showed that the death had occurred as a result of multiple trauma, which obviously pointed to culpable homicide and the court took that into account in its sentence. An appeal is now being made.

159. Court cases against many former public officials are being conducted in accordance with the procedural rules, although it should be noted that there is some delay in handing down the final sentence because of delays in the defence and many incidents affecting the normal course of the various proceedings.

160. The system of justice, particularly the Department of Public Prosecutions, is encouraging court proceedings in the various cases of torture that have been reported and 21 cases are under judicial investigation at the present time.

161. Democracy now prevails, but the previous period was marked by situations of failure to respect human rights, such as the use of torture by the police in its inquiries and, in addition, the absence of any link with the regular courts.

162. Police procedures for the prevention of crime and for restrictions on freedom of the individual have been thoroughly reviewed. The constitutional requirements for custody of individuals are properly observed and the police have hygienic premises in which juveniles, women and men are kept separate. Police training is in keeping with effective observance of respect for the dignity of the human being and confined to the maintenance of public order and free exercise of the rights and guarantees of the inhabitants of the country, ruling out any procedures that are contrary to basic human rights. Nowadays, in the event of a complaint of any violation committed by any State body, appropriate remedial steps are taken forthwith.

163. With reference to expulsion, the Convention against Torture prohibits extradition to a country where a person may be deemed to be in danger of being subjected to torture. Since the matter is not included in extradition treaties, the provisions of the Convention must apply. Accordingly, article 43, paragraph 2, of the Constitution stipulates that "No political asylee shall be sent by force to a country where he is wanted by the authorities".

164. Article 4 *in fine* of the Constitution establishes that the law shall regulate the freedom of individuals to dispose of their own body, solely for scientific or medical purposes. This provision is in keeping with the express prohibition on torture (art. 5) and the non-applicability of statutory limitations to the crime of torture.

Compensation

165. The Constitution establishes in article 106 that no public official is exempt from liability that, in the event of serious, ordinary or minor offences committed in the performance of his duties, he is held personally responsible, without prejudice to the subsidiary responsibility of the State.

166. In Paraguay no claims have yet been made against the State, but in the event of such claims, under the Constitution and the Convention, it is obliged to provide redress for the injury caused and compensation, as well as the rehabilitation of anyone who has been subjected to torture and, in the event of his death, for compensating his heirs. In the operative part of the judgement handed down by the court in the Mario Raúl Shaerer Prono case, the court declared that the guilty parties held civil liability, thus enabling the heirs to claim appropriate compensation in the civil courts.

Confessions extracted under torture

167. Constant and consistent jurisprudence supports the principle that no one is obliged to give evidence against himself. Consequently, it is obvious that a statement extracted under torture may in no circumstances be used as evidence. Extrajudicial statements (for example, those made to the police) do not have legal status and, as such, may not be used as evidence against anyone.

168. In addition, a statement obtained by physical harassment in police premises is considered invalid by the court and, in the event of such an act, an independent investigation must be initiated to determine the perpetrator(s) of the act in question.

169. The provisions contained in article 4 (Right to life) and article 5 (Express prohibition on torture) of the Constitution extend specifically to "cruel, inhuman or degrading punishment or treatment". In addition, it is an obligation of the State to ensure protection of the freedom and security of individuals.

170. No one is compelled to do anything not specified by law or deprived of anything not prohibited by law. Furthermore, article 10 of the Constitution prohibits slavery, bondage and the slave trade.

Article 8

171. Paraguay has openly declared its opposition to slavery. The preamble to the Constitution refers to "recognition of human dignity with the aim of ensuring freedom, equality and justice ...". This provision is reinforced by article 10, the first part of which prohibits slavery, servitude and the slave trade.

172. Article 46 of the Constitution lays down the principle of equality in the following terms: "All inhabitants of the Republic are equal in dignity and rights. No discrimination shall be permitted. The State shall remove obstacles or prevent factors maintaining or encouraging such discrimination. Any protective measures adopted in respect of unjust inequalities shall be regarded not as discriminatory but as egalitarian."

173. There is no specific legislation regarding prostitution as a form of slavery but, at the operational level, the approach taken by the police force is to combat such conduct through dissuasive action undertaken by police personnel, and frequent checks are carried out at public premises and places, dance halls, railway stations and, generally, any points that may serve as

regular meeting places for prostitution purposes. Under article 170 of the Civil Code, incitement to prostitution of a spouse is a ground for judicial separation and, under Act No. 45/91, it is also a ground for divorce.

174. The articles of the Penal Code referring to prostitution and the white slave trade have been amended by Act No. 104/90 so as to increase the penalties for procuring, especially where minors are involved. Article 4 of this Act prescribes a penalty of three to six years' imprisonment if the victim is under 12; two to four years' imprisonment if over 12 but under 15; and two to three years' imprisonment if over 15 but under 20. It further provides that these penalties will be increased by half if the victim has been enticed by deception or money or other gain, or is under guardianship, supervision or custody.

175. Article 5 provides for half of the penalties laid down in the previous article to be imposed on anyone who abets prostitution or corruption, even if acting with the person's consent, and on anyone who maintains or operates a house of prostitution or knowingly supports or contributes to the financing of any such house or knowingly leases or rents a building or other premises or any part thereof for the exploitation of the prostitution of others.

176. Article 7 establishes a penalty of four to eight years' imprisonment for anyone who trades or trafficks in women of full age or transfers them from one country to another for the purposes of prostitution, even with their consent, and any hiring or recruitment for such purposes. In the case of under-age females, the penalty is doubled.

177. Act No. 1340/89, amending Act No. 357/72 punishing unlawful trafficking in narcotics and dangerous drugs and other related offences, provides for preventive measures and for the rehabilitation of drug-dependent persons. Article 14 of this Act establishes a penalty of 10 to 25 years' imprisonment for anyone who supplies narcotic substances and dangerous drugs or products containing them.

178. There are guidelines to prevent forced labour. Article 10 in fine states that "the law may establish social obligations in favour of the State".

179. Article 5 of the Constitution provides that no one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. Furthermore, article 9 in fine of the Constitution provides that "no one is compelled to do anything not specified by law or deprived of anything not prohibited by law".

180. Chapter II, article 61, of the Penal Code provides that "Anyone who is guilty of an act or omission punished by this Code shall suffer the penalty imposed therefor". Article 67 of the Code provides, in relation to article 8 (3) (c) of the Covenant, that "imprisonment shall consist of the confinement of the convicted person in the relevant prison and performance of the occupation prescribed by the prison administration".

181. In this connection, chapter VI of Act No. 210/70, establishing the prison regulations, refers to prison labour and makes it obligatory for inmates to work as part of their treatment with the aim of instructing them and providing

them with vocational training. The work performed can be either industrial, agricultural, intellectual or artistic, provided that in the latter two cases this is the only work done by the inmate and that it makes a productive contribution to his treatment and to the functioning of the institution. Organization, methods and modalities of work, working days, working hours and preventive health and security measures must meet the requirements and standards of current labour legislation. The organization and direction of such work are the responsibility of the prison administration. Provision is also made for the work to be remunerated, and there is a system for State compensation in the event of industrial accidents and illnesses suffered by the prisoner on account of his work.

182. With regard to work that is not regarded as compulsory labour or alternative service for persons exempted from military service for reasons of conscience, article 129 of the Constitution provides that all Paraguayans have an obligation to prepare for and assist in the armed defence of the homeland. It makes military service compulsory and states that the law shall regulate the conditions for its performance, without peacetime service being able to exceed 12 months. The article also establishes that "Anyone who declares himself to be a conscientious objector shall perform services for the benefit of the civilian population through social welfare centres designated by law and under civilian jurisdiction. The regulation and exercise of this right must not be of a punitive character or impose obligations exceeding those established for military service ...".

183. Moreover, article 37 recognizes conscientious objection on ethical or religious grounds in the cases allowed by the Constitution and the law.

184. Article 128 of the Constitution establishes the primacy of the general interest and the duty to cooperate, stating:

> "In no case shall the interests of the individual prevail over the general interest. All inhabitants must cooperate for the good of the country, rendering the services and performing the functions defined as public obligations, as determined by this Constitution and the law."

185. With regard to cases of public danger or calamity, a series of situations such as the natural disasters that occurred in the period 1989-1991 (flooding from the Paraguay, Paraná and Pilcomayo rivers), affecting large numbers of people living in the adjoining areas, the need for housing for those affected by the flooding, fires, drought, storms and tornadoes and the threat of a cholera epidemic were decisive factors in the planning and establishment of a "National Emergency Committee" by Decree No. 6088/90, to act as an advisory body to the President of the Republic with the following functions and powers:

(a) Coordinating the activities of all government institutions in dealing with natural disasters;

(b) Taking appropriate coordinated action to cope with the effects of natural disasters;

(c) Planning and channelling assistance to communities affected by an emergency situation, such as flooding;

(d) Disseminating information on civil protection systems and methods available within and outside the country;

(e) Furnishing technical assistance to community groups;

(f) Providing assistance to natural disaster victims;

(g) Promoting international aid and cooperation;

(h) Advising the President of the Republic on the declaration of a state of national emergency.

186. With regard to work forming part of normal civil obligations, particular mention should be made of article 257 of the Constitution, which makes it obligatory for persons working in the service of the State to cooperate with the judicial administration in the performance of its mandate.

187. Article 1, first part, of Act No. 1/90 (Electoral Code) provides that "it is a political right and duty to vote ...", while article 3, first part, expounds in negative form the principle that "No one may prevent, limit or disturb the exercise of the vote. The authorities are obliged to guarantee and facilitate the exercise of the freedom to vote."

Article 9

Right to liberty and security of person, prohibition on being subjected to arbitrary arrest or detention

188. Article 9, first paragraph, of the Constitution provides that "Everyone has the right to protection of his freedom and security". Article 11 states that "No one shall be deprived of his physical freedom or tried except for the reasons and in the circumstances established by the Constitution and the law". In addition, article 12, first sentence, of the Constitution stipulates that no one shall be arrested or detained without a written warrant from the competent authority, unless he is caught in the act of committing an offence which carries a custodial sentence.

189. In accordance with these constitutional provisions, the Code of Criminal Procedure lays down a series of requirements that must be met in order to arrest or detain someone.

190. Article 339 specifies that "no one may be arrested other than by officers empowered by law to do so and by virtue of a written warrant from the competent judicial authority ... except as provided for in article 340 in regard to persons caught in the act of attempting to commit an offence, prisoners who escape while being taken to a place of detention, etc.". Arrest or detention may only occur in cases of flagrante delicto when there is significant evidence or strong indications of guilt (Code of Criminal Procedure, art. 6).

191. In this connection, article 573 provides: "No director or head of a prison, penitentiary or other institution for convicted persons, and no mayor or employee of detention or security institutions may, on pain of incurring

the penalties laid down in the Penal Code, take in or arrest any person except by virtue of a warrant of detention, arrest or imprisonment or a sentence imposing these or heavier penalties, issued or handed down by a competent authority or judge".

Communication and notification of the reasons for arrest

192. Article 12, paragraph 1, of the Constitution provides that anyone arrested has the right to be informed, at the time of the arrest, of the reasons for it, of his right to remain silent and of his right to defence counsel. At that time, the officer concerned must produce the written arrest warrant. Moreover, article 12, paragraph 2, indicates that the arrest must immediately be reported to the relatives of the person arrested or to persons specified by him.

193. Article 17 of the Constitution provides that everyone is entitled to be given prior and detailed information of the charges against him and to have the necessary documentation, means and time for the preparation of his defence, and provides for the right to freedom of communication.

194. Article 334 in fine of the Code of Criminal Procedure states that in no circumstances may arrest exceed 48 hours.

Right to a prompt trial, detention pending trial and guarantees

195. Article 12 of the Constitution lists the rights of detainees. Paragraphs 3, 4 and 5 establish the right to freedom of communication unless a judicial warrant has been issued debarring communication, which shall not apply to defence counsel or exceed the time-limit established by law. Detainees are also entitled to appoint an interpreter and to be brought before the competent judge within 24 hours.

196. Article 16 of the Constitution guarantees the legal defence of individuals and their rights and declares that it is inviolable. It also lays down the right to be tried by a competent, independent and impartial court.

197. Article 140, first part, of the Code of Criminal Procedure provides that, in the event of a person being caught in flagrante delicto, the police officers concerned shall immediately bring him before a judge, indicating the reasons for his arrest.

198. Article 17 of the Constitution refers to procedural rights, providing in its subparagraphs 1, 2, 5, 6 and 10 for the right to presumption of innocence; the right to a public trial except in cases determined by the court in order to safeguard other rights; the right to defend oneself or to appoint a lawyer; the right, in the event of insolvency, to have defence counsel appointed for him by the State; and the right of access to the proceedings. The article also provides that the pre-trial phase shall not last longer than is stipulated by law.

199. No one can be obliged to testify against himself, his spouse or the person with whom he maintains a de facto union, or against relatives within the fourth degree of consanguinity or the second degree of affinity, inclusive (Constitution, art. 18, para. 1).

200. As regards pre-trial detention, article 19 of the Constitution provides that such detention shall be ordered only when essential and shall not exceed the length of the minimum sentence for the offence concerned, as specified in the relevant order.

201. Article 332 of the Code of Criminal Procedure provides that: "Other than in cases of penalties imposed by a court judgement, individual freedom may only be restricted by arrest or pre-trial detention".

202. Our present judicial system is based mainly on written proceedings and is divided into various levels of jurisdiction, consisting of the courts of first instance, the courts of second instance or courts of appeal and, lastly, the Supreme Court of Justice. For civil and commercial proceedings, there are 12 rotas (12 judges) and 5 courts of appeal, known as divisions. For criminal proceedings, there are 11 rotas (11 judges) and 3 courts of appeal. There are five rotas for labour matters, with two courts of appeal, one division for correctional matters (one judge) and guardianship matters and two rotas for guardianship matters.

203. Article 2 of Act No. 879/89 (Code of Judicial Organization) provides that the judicial power shall be exercised by:

The Supreme Court of Justice;

The Court of Audit;

The courts of appeal;

The courts of appeal for juveniles;

The courts of first instance;

The guardianship and correctional courts for juveniles;

The magistrates' court;

The examining courts for criminal matters;

The arbitrating judges;

The justices of the peace.

204. Article 274 of the Penal Code provides that "Anyone who, in cases other than those laid down by law or in breach of the prohibition established by law, arrests, detains or abducts another person or in some other way deprives him of his freedom shall incur a penalty of three to six months' imprisonment." This penalty may be increased from 12 to 18 months or from 6 to 8 years if, in the former case, the offence entails the use of violence,

intimidation against a child under the age of 12 or the use of a false name or title, if the detention exceeds 8 days, etc., and if, in the latter case, it is committed against the person of the President, the Vice-President, Ministers, etc.

205. Article 337 of the Code of Criminal Procedure stipulates that the following requirements must be met in order to convert arrest into pre-trial detention:

(a) There must be justification, at least in the form of significant evidence, of the existence of an unlawful act warranting a custodial penalty;

(b) The detainee must have made or refused to have made a statement, and must have been informed of the reason for his detention;

(c) There must, in the opinion of the judge, be sufficient evidence to believe that the person concerned is responsible for the offence.

206. The Code of Criminal Procedure goes on to state (art. 338) that "pre-trial detention shall be recorded in the proceedings by a special decision of the examining magistrate indicating the grounds therefor".

207. Article 344, first part, provides: "An individual, authority or police officer who arrests a person must release him or bring him before the judge nearest to the place of arrest within 24 hours."

208. Article 351 of the Code states: "When the offence for which the accused was arrested carries only a fine or a custodial penalty not more serious than short-term ordinary imprisonment, or a combination of the two, the prisoner may be released on bail, provided that he furnishes security in one of the forms stipulated by the present title."

Lawfulness of detention and guarantees in the event of unlawful detention

209. As will be seen from the previous sections, there are various legal rules protecting the right of the individual to have recourse to a court for a prompt decision on the lawfulness of his detention. In addition, chapter XII of the Constitution relating to constitutional guarantees, provides safeguards against possible arbitrary detention. The remedies of habeas corpus and amparo, which were referred to at length in part I of this report, are available for this purpose.

Right to compensation

210. Article 17, paragraph 11, of the Constitution lays down the right to compensation by the State for individuals who are wrongly convicted. The right to fair and proper compensation is also referred to in article 39 of the Constitution, which states that: "Everyone is entitled to fair and proper compensation for harm or injury caused to him by the State ...".

Article 10

Humane treatment of prisoners

211. Basically, the Constitution safeguards all aspects of the observance of human rights, not only in the area of detention but also in respect of any kind of ill-treatment. Article 5, paragraph 1, of the Constitution, provides that "No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment".

212. Article 4, paragraph 1, of the Prisons Act also provides that prisoners shall be obliged to comply with the prison regime applied to them and shall not be subjected to violence, torture or ill-treatment or to any act or procedure which involves suffering, humiliation or physical harassment.

Treatment of prisoners

213. The requirements laid down in the relevant part of article 9 having been met, especially in regard to arrest or detention, we refer to the legal provisions regulating treatment and life in prisons, namely the Prisons Act, No. 210/70.

214. The Constitution lays down the general framework in this respect, in referring in article 21 to the detention of individuals: "The purpose of custodial penalties shall be to rehabilitate convicted prisoners and to protect society. The penalties of confiscation of property and exile are prohibited".

215. The country currently has a Directorate-General of Penal Institutions, a subsidiary body of the Ministry of Justice and Labour, which is responsible for ensuring that prisoners are properly treated. It sees to and monitors not only compliance with the legal and administrative provisions but also coordination with penal institutions so as to ensure that prisoners are properly treated both in proceedings and in regard to their personal security.

216. Following a study on the degree of rehabilitation and dangerousness in each specific case, provision has now been made for an appropriate penal institution for convicted persons who are almost all constant reoffenders posing a permanent threat to other individuals and to the prison staff. This enables those who have been sentenced for only minor offences to be given better treatment and guarantees adequate follow-up for those who are involved in proceedings.

217. While both convicted prisoners and persons awaiting trial are housed in the same facility, there are fundamental differences in treatment. While both categories of prisoner are at the disposal of the court dealing with their case and their legal representatives can visit them to inform them of the progress of the proceedings, persons awaiting trial are given preference in terms of cultural activities, occupations and handicraft work which keep them active and hence serve as one of the mainstays for their rehabilitation.

218. They may also receive regular visits from relatives so as not to lose touch with their family, a factor which has a marked impact on social rehabilitation.

219. Decision No. 21/92 of September 1992 established the Technical Criminological Department and the General Diagnosis, Classification and Treatment Plan of the Directorate-General of Penal Institutions. The Department is formed by an interdisciplinary group that initiates a classification process designed to establish the appropriate type of prison treatment with a view to the prisoner's future rehabilitation.

220. With regard to minors, article 18 of the Penal Code provides that: "The following shall be exempt from responsibility: (a) Children under the age of 10 ...".

221. Article 19, first part, of the Penal Code states that young people above the age of 10 but below the age of 15 who commit an offence carrying a penalty not exceeding one year's imprisonment shall be subject only to correctional measures at home, the parents or guardians being required to give a guarantee of custody.

222. The Prisons Act classifies offenders by sex and age, and there is a closed system of imprisonment. For the detention of criminal offenders, there is a Central Penitentiary at Tacumbú for males over 20 years old - the age of majority; the "Casa del Buen Pastor" Women's Correctional Institution for females who have attained the age of majority; the Colonel Panchito López Rehabilitation and Re-education Institute for juveniles over the age of 14; and the María Reina Rehabilitation Institute for girls over the age of 14. The latter two institutions, situated in the capital, house juvenile offenders who have broken the criminal laws or are guilty of misconduct. On average, 175 juvenile offenders enter these institutions each year, 87 per cent of them for offences against property, with a repeat offence rate of 47 per cent.

223. Article 20 of the Penal Code provides: "Offences committed through negligence and misdemeanours committed by young people under the age of 14 shall not be subject to penalties". In this connection, boys who are not criminally accountable are subject not to detention as such but to correctional measures, as decided by the correctional judge for minors. Girls who are not criminally accountable are subject to the same measures.

224. Institutions for minors, both boys and girls, do not operate as places of detention as such, but rather as transit preventive care centres whose operating method is to accommodate the minors temporarily and then to refer them, after diagnosis of their differing cases, to existing organizations and services dealing with their problems. Examples are the Mañana Institute for minors in physical and moral danger, and the Santa María Eufrasia de Marillac Home, a live-in institution for girls under the age of 13.

225. The Panchito López Institute has a permanent staff of psychologists who are in constant contact with the juvenile inmates, talking with them so as to discover their background and to be able to apply the appropriate treatment.

226. In women's institutions, inmates are looked after exclusively by female staff, and there are special premises for the care of pregnant inmates and inmates who have given birth. Pregnant inmates are exempted from working for 45 days before and after childbirth, whereafter, while nursing their child, they are excused from any unsuitable activity; moreover, during pregnancy and breast-feeding, they must not be subjected to disciplinary measures (Act No. 210/70, arts. 92, 94, 95 and 96).

227. Act No. 122/91 of 26 October 1992, providing for exemption from detention and pre-trial custody, also refers to minors accountable for criminal offences.

228. It should be mentioned that lawyers working as experts for the Directorate-General for Human Rights have handled many cases involving detained juveniles, helping them and, to date, obtaining many releases. It should also be pointed out that the Ministry of Justice and Labour, through the Directorate-General for Human Rights, is carrying out a programme designed basically to provide legal aid to minors at the Panchito López Institute who are deemed to be critically poor. The programme has been conducted by legal advisers of the Directorate-General for Human Rights since August 1991 and, since its entry into operation, many minors have had their cases speeded up and been released.

Prison system

229. Article 1 of Act No. 210/70 states that the purpose of the prison system is to keep individuals in custody in the cases prescribed by law while their alleged involvement in an offence is being investigated or established, and also persons who have been sentenced to imprisonment. In addition, it is stipulated that the system must be applied without discriminating or differentiating between prisoners other than as required by the individualized treatment which they must be given (Act No. 210/70, art. 5).

230. The prison system is a progressive one, consisting of:

(a) A period of observation;

(b) A period of treatment;

(c) A period of probation and release on bail in the event of a sentence (in accordance with art. 68 of the Penal Code).

231. Persons admitted to penal institutions must have been detained by order of a competent authority and placed under the jurisdiction of the courts. For the purposes of the prison system, the term "prisoner" shall mean a person convicted or subject to security measures who is held in a penal institution.

232. Prisoners are classified by sex, age, nature and class of offence, criminal record, cultural level, occupation or profession and family status.

233. With the aim of instilling in prisoners habits conducive to harmonious coexistence, treatment includes hygienic prison conditions, personal cleanliness of prisoners and civility in the various aspects of prison life, which is calculated to give prisoners a willingness and ability to tackle problems.

234. As regards hygiene, close attention is paid to the requirements of space, light, ventilation and sanitary facilities.

235. Prisoners are obliged to wear uniform within the institution and to keep it in decent condition, but outside they are free to wear their own clothes.

236. Prisoners may receive supplementary food but are not allowed to consume alcoholic beverages.

237. On admission, the prisoner is informed of the regime which will apply to him, the rules of conduct to be observed, the disciplinary system in force and the avenues of complaint open to him. He is entitled to submit complaints and petitions to the prison governor, some other higher administrative authority or the judge in the case.

238. With regard to discipline, inmates must comply with the disciplinary rules in force within the prison. A prisoner on whom a disciplinary sanction is imposed must first be informed of the offence ascribed to him and be given an opportunity to make a rebuttal.

239. Disciplinary sanctions are as follows: caution; total or partial loss of regulation privileges; confinement for up to 30 days in the prisoner's own cell with reduction of additional amenities; solitary confinement for up to 30 days; placement in units with more rigorous treatment; and transfer to institutions of a different type. Means of physical constraint are used only when the conduct of the prisoner as an individual or in a group entails an imminent danger of serious damage to persons or property, and are applied only by order of the prison governor.

240. Prisoners are rated according to their conduct and their merits, as deduced from the way they behave, their character, their attitude or their morals or other personal qualities, with a view to assessing their level of rehabilitation. The ratings are as follows:

(a) Excellent;

(b) Very good;

(c) Good;

(d) Fair;

(e) Poor; and

(f) Very poor.

Depending on their rating, prisoners enjoy certain privileges such as being able to receive visits, to participate in recreational activities, etc., and even to be granted temporary outside visits and release on parole.

241. Prisoners may communicate regularly with their relatives, associates or friends. In addition there are special premises within the prison where inmates can receive private visits from members of the opposite sex, in accordance with the regulations. They also receive correspondence in the normal manner, subject to control by the administration, and mail privileges can be restricted only for disciplinary reasons.

242. Prisoners are kept informed of national and international developments through access to the written and oral media.

243. In addition to the activities mentioned, relations between prisoners are fostered through sporting, cultural, religious and artistic activities and the work they perform in prison.

244. Prisoners are free to profess the religion of their choice without let or hindrance. They are entitled to maintain contact with a representative of their religion and to possess texts of their faith.

245. As a rule services are held within the institution; these are mainly Catholic services, since Catholicism is the majority religion in Paraguay, but nobody is compelled to participate. For the practice of the Catholic religion, the prison has a chaplain responsible for the religious and moral instruction and spiritual guidance of the inmates.

246. Prisoners have a right and an obligation to receive medical care to preserve and improve their physical and mental health and cannot be subjected to medical experimentation.

247. Prisons have doctors for consultation who examine prisoners' state of health and provide first aid in serious cases. Any prisoner who is found to be suffering from a serious or special illness is taken to a special care centre for better treatment, while remaining in communication with the judge in the case.

248. With regard to prisons for women and girls, the prison governor reports any birth occurring within the institution for entry in the civil register and informs the judge in the case and the relatives of the inmate concerned. In such circumstances, no mention is made in the civil register of the fact that the birth occurred in prison.

249. Article 3 of Act No. 210/70 provides that treatment with a view to the social rehabilitation of the prisoner shall be comprehensive and shall be of an educational, spiritual, therapeutic, assistance-oriented and disciplinary character.

250. Work is one of the most effective means by which the authorities can treat prisoners. It is genuinely humane and moral in character rather than being regarded as an additional punishment. The aims and characteristics of prison labour are as follows:

(a) To instruct prisoners;

(b) To impart vocational training;

(c) To provide prisoners with remuneration; and

(d) To enable them to specialize in accordance with modern industrial technology.

251. Prisoners are obliged to work. Work is either industrial, agricultural, intellectual or artistic and is applied not as a punishment but, rather, with humane and moral aims.

252. Currently, as a result of educational programmes carried out by the National Prison Service, prisoners are engaging in carpentry and building work, extending and renovating the institutions, as well as producing leather goods, horn cups, bombillas (metal tubes for drinking maté), etc.

253. Earnings from prison work are used exclusively for the general improvement of the prisoner and for the enhancement of his occupational skills as part of his rehabilitation.

254. One of the main activities for prisoners is education, which is compulsory for illiterates and those who have not completed primary school. Inmates over the age of 45 and those lacking a minimum intellectual level may be exonerated from this obligation.

255. Sporting activities are also encouraged in prisons, preference being given to team sports such as indoor and outdoor football and volleyball, as well as tennis. There are also cultural activities in the form of choirs, bands and orchestras, and there is a choir of 20 prisoners who perform at religious and patriotic events.

256. Article 586 of the Code of Criminal Procedure, referring to rehabilitation, states: "Anyone sentenced to general or specific disqualification from occupying public office and exercising political rights shall be rehabilitated ipso facto when the sentence has expired or a pardon has been obtained". The same applies to persons sentenced to rigorous imprisonment under article 587, as amended by article 74 of the Penal Code. Rehabilitation has the effect of removing all the disabilities resulting from a conviction (Penal Code, art. 589).

257. It should be mentioned that a prisoner who displays some form of mental derangement is separated from the common regime in the prison, in which he is reincorporated when this derangement ceases. A prisoner suffering from a mental disturbance that does not entail derangement but is so serious as to disrupt the calm of his fellow-prisoners is also separated from the common regime.

258. By virtue of the authority vested in it, the judiciary must verify at regular intervals whether the prison regime is in accordance with the norms laid down in Act No. 210/70 and the regulations enacted in consequence (Act No. 210/70, art. 103). In this respect, members of the Supreme Court of

Justice, criminal court judges and government procurators make periodic visits to prisons in order to assess the general situation and talk with untried prisoners who request an interview. On this occasion, prisoners can express any complaints and misgivings and find out about the state of progress of their case and whether it can be speeded up.

259. The Executive, through prison inspectors appointed by the competent authority, must make periodic checks of the same kind, as enumerated in the above-mentioned article 103. In both cases, persons responsible for any non-compliance or irregularities that may be established shall be liable to the penalties laid down in the Penal Code.

260. Title X of the Code of Judicial Organization, relating to prison visits, provides as follows:

> "Art. 360. The Supreme Court of Justice, the members of the Court of Appeal, judges of first instance and examining magistrates in criminal cases, public prosecutors and official guardians of poor people and minors shall visit penal and correctional institutions at least once every three months, or when they deem it appropriate.
>
> The purpose of such visits shall be to ascertain the situation of the prisoners, any complaints which they may have regarding their treatment in prison and any petitions they may make regarding the state of progress of their trial.
>
> Art. 361. The Supreme Court of Justice shall inform the Ministry of Justice and Labour of any failings and shortcomings that may be observed in penal and correctional institutions, so that they may be rectified."

261. It will be seen from the foregoing that the laws and administrative regulations are in compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Article 11

262. In Paraguay's legal system, civil liability may be incurred as a result of failure to fulfil contractual obligations; such failure may not, however, give rise to imprisonment. No one may be arrested or detained for not having fulfilled a contractual obligation.

263. Article 13 of the Constitution states, as a general principle: "Deprivation of freedom for debt is not admitted, unless ordered by a competent judicial authority for failure to fulfil maintenance duties or in lieu of fines or judicial security".

Article 12

264. Within the legal framework, article 41 of the Paraguayan Constitution establishes liberty of movement and residence for all inhabitants of the Republic. Aliens may invoke constitutional protection, especially with regard to the control of entry into the country, departure, travel within the country, categories of admission and duration of their sojourn in Paraguay.

265. This is apparent from article 41, which reads:

> "Inhabitants may leave or return to the Republic and, in accordance with the law, import or export their property. Migration shall be regulated by law with due observance of these rights. The entry of aliens not permanently settled in Paraguay shall be regulated by law, taking into consideration the international agreements on the subject. Aliens permanently settled in Paraguay, may not be obliged to leave it except by virtue of a judicial decision".

266. Among the first measures adopted by the Government during the democratic transition initiated by General Andrés Rodríguez, the former President of the Republic, was the encouragement of the return of all persons persecuted for political reasons and the creation of conditions to encourage the return of persons who had emigrated for economic reasons. To this end, it adopted Act No. 40/89, which established the National Council for the Repatriation of Nationals, with the aim of encouraging the return of Paraguayans resident abroad and promoting their permanent settlement in Paraguay.

267. On 10 January 1991, the Paraguayan Government removed the geographical reservations which the previous regime had entered concerning the 1951 Geneva Convention relating to the Status of Refugees, thereby enabling any person persecuted for political reasons, irrespective of nationality, to request protection and asylum in Paraguay.

268. At present, the Government, in keeping with its desire to strengthen democracy, is dealing with all aspects of national life in order to permit, with full respect for human rights, the complete development of all who live in our country, whether they be Paraguayans or non-Paraguayans.

269. In this connection, Act No. 227/93 established the Development Secretariat for Paraguayan Returnees and Refugees, with the following responsibilities:

(a) To define policies and strategies in this area;

(b) To supervise implementation of policies in this sector, study migration phenomena, provide feedback for political courses of action, and suggest operational and management mechanisms;

(c) To propose guidelines for national and international action on problems in this area.

270. In our positive law, the legislation on aliens is contained in the Migration Act (No. 470) of 1974, which established the executing agency for national migration policy. This agency is the Directorate-General for

Migration, within the Ministry of the Interior; the Executive is responsible for issuing regulations concerning this Act. In keeping with the general tenor of the Act, article 2 stipulates: "The entry and stay of aliens in the territory of the Republic shall be subject to the provisions of this Act".

271. There are impediments to the entry of aliens on grounds of national security, public order and health, among others; these impediments are compatible with article 12, paragraph 3, of the Covenant. The Act thus states:

> "Aliens may not enter the national territory if:
>
> (a) They do not fulfil the conditions concerning physical and mental health, because they suffer from:
>
> (1) Congenital or acquired physical or organic defects which prevent them from maintaining general fitness for work;
>
> (2) Infectious and contagious diseases; or
>
> (3) Chronic diseases of the nervous system or mental illness;
>
> (b) They have a criminal record, this impediment covering:
>
> (1) Persons who have committed offences punishable under the laws of the Republic by more than two years' imprisonment;
>
> (2) Persons who have committed offences punished by not less than two years' imprisonment but are recidivists and are considered dangerous; and
>
> (3) Persons who, through lack of diligence, vagrancy, begging or drug addiction or because of the moral degradation of the environment in which they live, are considered likely to commit an offence ...".

272. Nevertheless, persons in the following situations are exempt from these general impediments to admission, as provided for in article 6:

(a) Cases of a health character, when the aliens concerned are members of a migrant family unit intending to join a unit already established in Paraguay, provided that no public health risk attaches to such entry;

(b) Cases of a criminal character in which the persons concerned have committed political offences or offences of negligence or are first offenders who have been of good conduct since committing the offence.

273. As provided for in article 7 in the Migration Act, aliens may be admitted into the national territory under one of the following categories: permanent; temporary resident; tourist; and transit.

274. The permanent category covers aliens who intend to settle in Paraguay and have complied with the relevant requirements, being able to produce:

(a) An entry permit issued by the Directorate-General for Migration after they have presented to the Paraguayan Consul a health certificate issued by the competent authority in the country of origin;

(b) A certificate, diploma or other document issued by the competent authority in their country of origin testifying that they:

(i) Have an occupation, skill or trade or are engaged in a financial, stock-raising, crop-growing, industrial, commercial, educational, artistic or employment activity that will enable them to live in the Republic;

(ii) Are in possession, for the same purposes, of sufficient financial resources.

This documentation is approved by the consul and transmitted to the Directorate for Migration, which completes the formalities and, when the entry permit has been issued, transmits it to the Consulate in question.

275. On entering Paraguayan territory, the alien is required to present the entry permit, certificates, identity card or valid passport containing the proper visa. Aliens who have entered the country and are in the permanent category must obtain an identity card after one year's residence and are entitled to travel abroad for purposes of tourism or for private reasons, but may not remain abroad for more than two consecutive years.

276. An alien who wishes to change his declared activity may do so after one year's residence and must inform the Directorate-General for Migration accordingly.

277. The temporary-resident category includes those aliens who come to the Republic with the aim of engaging in educational, scientific, cultural, religious, sporting or similar activities for a specific period. They are required to fulfil the same requirements as tourists and to produce the document or contract duly approved by the competent Consul and specifying the activity to be undertaken in Paraguay.

278. The tourist category is considered to include aliens who travel to Paraguay temporarily for purposes of leisure, medical treatment, scientific meetings or any non-remunerated activity, with no desire to remain there permanently. They are required, on entering the national territory, to present their identity card or passport containing a valid visa issued by the Paraguayan consular authority, together with the health certificate.

279. The transit category is considered to include:

(a) Aliens who disembark in Paraguayan territory in order to travel to their country of destination;

(b) Crew members of ships and aircraft;

(c) Drivers and other personnel of international land transport undertakings.

280. The requirements for admission in transit are:

(a) Possession of a ticket to, and authorization to enter, the country of destination in the case of passengers, or proof of crew member status;

(b) Health certificate concerning transmissible diseases, as required by the relevant regulations.

281. For such time as their periods of residence remain in force, aliens who enter the country as temporary residents may leave and re-enter the territory as often as they wish, without need for a new authorization.

282. No restrictions are imposed on Paraguayan citizens as regards residence, freedom of movement within or outside the territory, return to the territory or the right to free choice of residence, as provided for in article 41 of the Constitution cited above.

283. Thus, an alien has broad freedom to enter the national territory, provided that he complies with the requirements laid down in Paraguayan legislation, and to leave that territory, unless for reasons stipulated in article 12, paragraph 3, of the Covenant he is unable to do so, and unless, for reasons clearly stipulated in the Migration Act, his freedom of movement is subject to that Act.

Article 13

284. During the Government of President Stroessner all kinds of infringements of liberty were perpetrated, one being the exclusion from Paraguayan territory of aliens from countries such as Israel, Iraq and the Islamic Republic of Iran or countries which, in the opinion of the Government, had a communist and pro-terrorist policy. If such aliens entered Paraguay for any reason, they were expelled forthwith on the grounds of national security, and in order to preserve public order and the inappropriately-named democratic regime of that presidential period.

285. However, our current legal procedure has filled this normative gap, the right to a hearing and if necessary to appeal having been established within the constitutional framework. Thus, article 41 of our current Constitution stipulates that "aliens permanently settled in Paraguay may not be obliged to leave the country except by virtue of a judicial decision".

286. The provision relating to the expulsion of an alien from the territory of the State is contained in the Migration Act, which stipulates that expulsion shall be ordered in the case of:

(a) Those persons who do not have a good criminal record, in other words, persons who have committed offences that carry a sentence of two years' imprisonment or are recidivists;

(b) Those who, through lack of diligence, vagrancy, drug addiction, prostitution or the moral degradation of the environment in which they live, engage in conduct conducive to crime;

(c) Those who are associated or affiliated with any organization which advocates the destruction of the democratic regime through violence, regardless of their period of residence in Paraguay, provided that they have not obtained naturalization.

Persons in the first two situations will be expelled, provided that the impediments were known within three years of their entry into the country.

287. The expulsion order is not enforced in the exceptional situations provided for in article 6 (b) of the Migration Act or in cases where the alien has married a Paraguayan national or had a Paraguayan descendant.

288. Action on the expulsion of aliens is taken by the Ministry of the Interior, through the Directorate-General for Migration. The procedure allows for an appeal to be lodged against the expulsion order with the first rota Criminal Court of First Instance; it must be lodged within three working days of the notice of expulsion being served, account being taken of the extension allowed on grounds of distance, and will have the effect of suspending the order. The procedure will then be as follows:

(a) The person served will appoint a defence counsel or, failing that, the court will appoint such counsel ex officio; evidence may be heard within 15 days;

(b) The decision will be issued within the 15 days immediately following the end of the period set for the submission of evidence.

289. The person on whom the order is served will be liable to the security measure established in article 44 of the Migration Act, which states "Until such time as the expulsion or non-admission becomes effective, the alien shall remain subject to police supervision in the domicile which for the purpose he maintains in the national territory or, if necessary, where the authorities decide", unless, in the light of the ground invoked, detention in police premises is deemed advisable.

Article 14

Equality before the courts; right to a fair, public and independent trial

290. The Paraguayan Constitution contains specific provisions safeguarding equality before the courts and the right to a public hearing and with due guarantees by an independent court during the course of the criminal proceedings.

291. The Constitution provides specifically for the following:

(a) Art. 46: "All inhabitants of the Republic are equal in dignity and rights. No discrimination shall be permitted. The State shall remove obstacles and prevent factors maintaining or encouraging such discrimination. Any protective measures adopted in respect of unjust inequalities shall be regarded not as discriminatory but as egalitarian";

(b) Art. 47: "The State shall guarantee to all inhabitants of the Republic:

(1) Equality of access to justice, for which purpose it shall remove any obstacles preventing such equality;

(2) Equality before the law ...";

(c) Art. 16: "The defence of individuals and their rights in legal proceedings is inviolable. Every person has the right to be tried by competent, independent and impartial courts and judges";

(d) Art. 17: "In criminal proceedings or in any other proceedings entailing a penalty or punishment, every person has the right: ... (2) To be tried in public, except in the cases specified by the judge in order to safeguard other rights ...";

(e) Art. 256, first part: "Proceedings may be oral and public in the manner and to the extent determined by law ...". Art. 247, in fine: "The judiciary has the duty to administer justice, which is exercised by the Supreme Court of Justice and the higher and lower courts in the manner established by the Constitution and the law".

292. The independence of the judiciary is guaranteed. Only the judiciary may hear and decide on acts of a contentious character. A penalty is laid down for persons who endeavour to undermine the independence of the Judiciary and of its magistrates; such persons will be disqualified from holding public office for five successive years, apart from the penalties established by law (Constitution, art. 248, first and third paras.).

293. As soon as the regulations are established concerning the Council of the Judiciary, the Supreme Court of Justice, on the nomination by the Council of lists of three candidates, will be responsible for designating the members of the higher and lower courts throughout the Republic. The Council of the Judiciary will be made up of one member of the Supreme Court of Justice designated by that Court, one representative of the Executive, one Senator and one Deputy nominated by their Chambers, two qualified lawyers appointed by their peers in a direct election, one professor from the faculties of law in the National University of Asunción elected by his peers and one professor from a faculty of law with not less than 20 years of service in a private university elected by his peers (Constitution, arts. 251 and 262).

294. The irremovability of judges is commensurate with their post, location and grade, and continues for the duration of the period for which they were appointed. They may not be transferred or promoted without their prior and

express consent. They are designated for periods of five years as from the date of their appointment. They may be prosecuted and dismissed only if they have committed an offence or failed to perform their duties as defined by law, by decision of a panel of judges (made up of two members of the Supreme Court of Justice, two members of the Council of the Judiciary, two Senators and two Deputies, the latter four being lawyers) (Constitution, arts. 252 and 253).

295. No judge may be accused or judicially interrogated for opinions he expresses in the performance of his functions. No judge may be detained or arrested except in a case of flagrante delicto carrying a custodial penalty. If such a case should occur, the acting authority is required to place the magistrate under house arrest in his own home, report the matter immediately to the Supreme Court of Justice and transmit the facts to the competent judge (Constitution, art. 255).

296. Justices of the Supreme Court may be removed only through impeachment. They retire on reaching the age of 75 (Constitution, art. 261).

297. Article 196 of the Code of Judicial Organization (Act No. 879/89) stipulates: "Judges shall give hearings on all working days; the hearings shall be public unless for reasons of morality or decency it is deemed necessary or advisable that they should be private". Article 153 (b) of the Code of Civil Procedure provides that the hearings shall be public unless there is an express provision to the contrary.

298. Article 15 of the Code of Civil Procedure establishes the following duties of judges, without prejudice to the provisions of the Code of Judicial Organization:

"(a) To attend hearings of evidence and personally take the steps for which this Code or other laws make him responsible, with the exception of those where delegation of responsibility is authorized;

(b) To conduct the proceedings, with the obligation, within the limits expressly established by this Code, to:

(i) Concentrate as far as possible within a single act or hearing all the steps required to be taken;

(ii) Ensure the greatest possible economy of procedure in the handling of a case; and

(iii) Maintain the equality of the parties in the proceedings".

299. Article 219 of the Code for Juveniles (Act No. 903/81) establishes the non-imputability of children under the age of 14. Thus if they are believed to have perpetrated unlawful acts, they may not be tried and sentenced by the ordinary courts; in all cases they will remain in the care of the Juvenile Courts and will be subject to the rules established in the Code.

300. In Paraguay, the age of majority is 20. As regards the public nature of trials in which minors are involved, they are protected in the following manner: their names are not published in order to prevent them from being identified, and if they are photographed, their faces are covered.

301. All publicity in proceedings relating to minors is prohibited.

302. Notifications and summonses are effected personally or by official order (Code for Juveniles, art. 266).

303. Any person found guilty of violating these provisions is liable to a fine of up to 30 times the minimum daily wage or to imprisonment for up to 10 days, which may take the form of house arrest (Code for Juveniles, art. 267).

304. The presumption of innocence is a constitutional guarantee and is provided for in article 17 in the following terms: in a criminal trial or any other trial entailing a penalty or punishment, every person has the right to be presumed innocent.

305. Every person under detention has the right to be informed at the time of his arrest of the cause for it (Constitution, art. 12 (1) para. 1, first part). In addition, article 17, first part, of the Constitution provides that in the criminal trial or in any other trial entailing a penalty or punishment, every person has the right to be informed of the charge promptly and in detail.

306. Article 12, first part, of the Constitution states that every person under detention is entitled to be informed of his right to remain silent and to be assisted by a defence counsel of his choosing. If incommunicado detention is ordered by the competent judge, this does not apply to the defence counsel, thus ensuring that even in exceptional cases the detainee fully enjoys his right of defence (Constitution, art. 12, para. 3). Article 17, para. 7, of the Constitution establishes the right of the individual to have the necessary documents, means and time for the preparation of his defence, with complete freedom of communication. Article 17, paras. 8 and 9, establishes the right to present, produce, verify and challenge evidence and the right not to be confronted with evidence obtained, or activities performed, in violation of the law.

307. The Paraguayan legal system, following the principles proposed in order to achieve greater dispatch in the area of justice, has made provision in the new Constitution (art. 256, first and third paras.) for the oral and public nature of proceedings in the manner and to the extent determined by law. And with regard to proceedings regarding labour matters, it is stipulated that they shall be oral in nature and based on the principles of immediacy, economy and concentration.

308. Article 15 of the Code of Civil Procedure provides that judges shall have the following duties and powers:

"(a) To render judgements and other decisions within the time-limits set by law;

(b) To conduct the proceedings within the limits expressly established by this Code;

(c) To concentrate as far as possible in a single act or hearing all the steps required to be taken".

309. Article 17 of the Constitution stipulates that every person has the right to defend himself personally or through legal assistance of his own choosing, that the State shall provide defence counsel free of charge if that person cannot afford to pay, and that he shall have access, personally or though his defence counsel, to the proceedings, which may in no circumstances be withheld from them. The pre-trial proceedings may not continue beyond the time-limit set by law.

310. Article 11 of the Penal Code stipulates that in a trial the defence of the individual and of the rights of defendants is inviolable. The latter may defend themselves in person or be defended by persons whom they trust and appoint for that purpose. Failing this, the judge will appoint defence counsel for them.

311. As regards representation, article 87 of the Code of Judicial Organization stipulates that every natural person having legal capacity may, personally in legal proceedings and under the supervision of a lawyer, exercise his own rights and those of his children, under legal age, whom he represents. Apart from these persons, any person who appears before the courts of the Republic must be represented by registered procurators or lawyers.

312. In Paraguay, to assist needy persons, the State, through the judiciary, has defence and prosecuting counsel for needy persons, persons who are absent or persons who lack legal capacity for civil and commercial proceedings. In labour matters the Office of the Labour Advocate exists, and in criminal matters, defence lawyers for needy persons act, each in their own area of specialization, on behalf of persons lacking financial means.

313. The examining magistrate receives statements from all persons who have been or may be named by the persons involved in the proceedings or persons who, in his opinion, have knowledge of the offence which he is endeavouring to investigate or prove (Code of Criminal Procedure, art. 233, first part). All inhabitants of the country, whether Paraguayans or aliens, who are not disqualified or subject to an impediment have an obligation to comply with the summons in order to state everything they know about what they are asked (Code of Civil Procedure, art. 234).

314. There is no limit on the number of witnesses against he defendant and witnesses on his behalf but only material witnesses will be heard, together with witnesses who may be necessary to prove the act, its perpetrators and accessories, and relevant circumstances.

315. Chapter V of the Code of Civil Procedure makes provision for testimony basically in the following articles:

(a) Art. 315: Blood relatives or relatives in a direct line of the parties, or the spouse, even if legally separated, except for the purpose of recognition of signatures or under special provisions of other laws, may not be produced as witnesses;

(b) Art. 317: When the parties wish to furnish evidence through witnesses, they are required to submit a list of such witnesses with their names, occupation, marital status and address. If, because of the circumstances of the case, the party concerned does not know some of these particulars, he need only give sufficient particulars to enable the witness to be identified without delay and summoned. Examination may be suspended by the parties until the hearing at which the witnesses are to testify;

(c) Art. 318: In an ordinary proceeding each party may produce up to a maximum of 10 witnesses, unless an express and duly substantiated request justifying the production of a greater number is made. This limitation does not apply to summonses for recognition of signatures. The parties may also propose, on a subsidiary basis, up to three witnesses to replace any who may be unable to testify because of death, incapacity or absence. If the judge has increased the number, they may produce up to five more;

(d) Art. 326: The witnesses must remain in a place where they are unable to hear the testimony of other witnesses. They will be called successively and individually, the witnesses produced by the plaintiff alternating as far as possible with those produced by the defendant, unless the court establishes another order for special reasons;

(e) Art. 319: If the testimony is admissible, the judge will order it to be received at a public hearing which he will convene for the examination of all the witnesses on the same day. In cases where, because of the number of witnesses produced by the parties, it appears that it will be impossible for all of them to testify on the same date, as many hearings as may be necessary will be scheduled on successive days and the witnesses who will testify at each hearing will be specified, in conformity with the rule established in article 326. The court will make provision for a suppletory (second summons) hearing shortly thereafter in order to enable witnesses who did not attend the scheduled hearings or hearings which were not held for reasons not attributable to the witness to testify. When witnesses are summoned, they will be notified of both hearings, and warned that if they fail to attend the first hearing without due cause, they will be compelled by the police to attend the second and will be liable to a fine, the amount of which will vary between 3 and 20 times the legal minimum daily wage.

316. Equality in the proceedings is a fundamental premise of our legal system. Consequently, as we have already seen, the parties may present and request the attendance of witnesses, the circumstances being the same for witnesses aginst them and witnesses on their behalf.

317. Article 105 of the Code of Civil Procedure stipulates that at all stages of the procedure the Spanish language must be used. If the deponent does not know Spanish and cannot express himself in Guaraní, the judge or court is required to designate a public interpreter. For the purposes of the examination of deaf, mute or deaf-mute persons who are able to make themselves

understood only by means of a specialized language, an interpreter must again be appointed. Documents in a foreign language may be inserted in the case file only when they have been rendered in Spanish by a public translator.

318. Article 12 of the Constitution establishes the right of every person under detention to have access to an interpreter if necessary. The Code of Criminal Procedure (C.C.P.) contains specific provisions guaranteeing the right to an interpreter: "If the person questioned does not understand the national language, he shall be examined through an interpreter, who shall swear to act well and faithfully in the performance of his duty." (Art. 209.)

319. The interpreter appointed shall be duly qualified as such. If there is no qualified interpreter in the place where the statement is to be given, an expert in the language in question will be appointed.

320. If the person questioned is a deaf-mute but can read, the questions will be put to him in writing. If he can write, he will reply in writing; if he can neither read nor write, an interpreter will be appointed to put the questions to him and to receive his answers (C.C.P., art. 210). A deaf-mute teacher will be appointed interpreter if there is such a teacher in the place in question, failing which, any person able to communicate with the person in question will be appointed. The person appointed will take the oath in the presence of the deaf-mute before beginning to perform his duty.

321. Unlawful acts dishonouring defendants do not affect their relatives or members of their household (Constitution, art. 18).

322. No one may be compelled to testify against himself, against his spouse or against the person with whom he is living, or against his relatives within the fourth degree of consanguinity or second decree of affinity inclusive. No defendant may be compelled to testify against himself. In no circumstances may judges make charges or counter-claims in order to ascertain the existence of the offence or the defendant's participation in it. The act of ex officio special confession is accordingly abolished. (C.C.P, art. 10.)

323. When the defendant is over the age of 10 but under 15, the examining magistrate must establish, by means of a judicial inquiry, that he is a juvenile and, in particular, his aptitude or maturity with regard to the perpetration of offences (C.C.P. art. 220). Persons under the age of 18 may not testify except to give ordinary information and solely for the purpose of the pre-trial proceedings.

324. The Penal Code provides that children under the age of 10 and children between the ages of 10 and 15 who commit an offence carrying a penalty of not more than one year's imprisonment shall be exempt from criminal liability and subject only to correctional measures at home, the parents or guardians being required to give a guarantee of custody (Penal Code, art. 19, first para.). Article 219 of the Code for Juveniles (Act No. 903) establishes the non-imputability of juveniles under the age of 14.

325. If juveniles commit an unlawful act, they are not prosecuted or sentenced by ordinary courts. In all cases they remain in the care of the juvenile courts and are subject to the rules established in the Code for Juveniles. This Code also refers to correctional procedure, under which non-working days and times are authorized and the terms are peremptory.

326. Juveniles aged 14 or under remain subject to the custody of their parents or guardians. If they are found to be in physical or moral danger, by court order they are placed in an establishment for their care, or their custody is transferred to other persons whether or not they are related to them. Police officers and detention establishments are forbidden to keep juveniles in a place where they are able to communicate with detainees of full age.

327. Once the proceeding has been initiated, the judge hears the juvenile's statement about the act with which he is charged and hears all the explanations relating to his personality.

328. The multiple-instance system exists in our country; in other words, there are courts of first instance, courts of appeal and the Supreme Court of Justice. On the subject of appeals, the C.C.P. contains the following provisions.

329. The remedy of appeal lies only against final judgements, decisions on interlocutory matters or decisions which cause irreparable damage. This is understood to mean damage for which there is no redress by means of the final judgement (Code of Civil Procedure, art. 395).

330. The remedy is lodged verbally or in writing in the act of notification. The appellant is only required to lodge the appeal; if this rule is infringed, the judge will order the relevant document to be returned, following notification in the case file by the court secretary of the date on which the appeal was lodged (Code of Civil Procedure, art. 397).

331. The final judgement is open to appeal without statement of grounds, unless the person concerned requests that the appeal be granted with grounds stated and with suspensive effect, apart from those cases in which the law provides that it shall be granted without suspensive effect.

332. If the final judgement is rendered in an ordinary proceeding and is the subject of an appeal only in respect of accessory judgements, the appeal will be granted with grounds stated and with suspensive effect.

333. An appeal may be lodged with the Supreme Court of Justice against the final judgement of the court of appeal which quashes or amends the judgement at first instance. In this case an appeal may be lodged only against what has been the subject of amendments and within the limit of the amendments. This remedy does not lie against judgements rendered in executory proceedings, possessory proceedings and in general proceedings which admit a subsequent action.

334. Appeal also lies against decisions originating from the court of appeal that cause irreparable damage or decide interlocutory matters.

335. Article 31 of the Code of Judicial Organization contains provisions concerning the courts of appeal in the various jurisdictions and the establishment of as many divisions as may be necessary in those courts. Each division is made up of not less than three members.

336. Article 27 of the Code stipulates that the Supreme Court of Justice will hear appeals and annulment proceedings concerning:

(a) Final judgements rendered by the Court of Audit and courts of appeal which amend or quash judgements at first instance, in accordance with the provisions of the codes of procedure and the relevant legislation;

(b) Decisions originating from the courts of appeal in civil, commercial, criminal and audit matters; and

(c) Judgements of the courts of appeal imposing the death penalty (now rescinded, since the death penalty no longer exists in our legislation) or imprisonment for a term of 15 to 30 years, these judgements not becoming final without the decision of the Supreme Court of Justice. The remedy of appeal and the remedy for nullity will always be deemed to have been lodged against these judgements even if the parties accept them.

337. On this subject, chapter II of the Code of Criminal Procedure contains the following provisions:

(a) Art. 490: The remedy of appeal is admitted only against final judgements, interlocutory orders which decide a special plea and other matters against which this remedy lies;

(b) Art. 492: The lodging of the appeal shall be in writing or verbal in the act of notification. The document shall be confined to the lodging of the appeal; if this provision is infringed, the document is returned following notification by the secretary in the record, specifying the remedy and the date on which it was lodged. The judge will order the appropriate action, with no further formality;

(c) Art. 493: The appeal against a final judgement is granted without statement of grounds and with both effects, unless the person concerned requests that it be admitted only with grounds stated. If the appeal is for acquittal, the judge may, without prejudice to the remedy, grant bail with security;

(d) Art. 494: Provided that the appeal is consistent in both effects, the original documents are ordered to be sent to the higher court.

338. Article 17, paragraph 11, of the Constitution expressly stipulates that in criminal proceedings or in any other proceeding entailing a penalty or punishment, every person has the right to be compensated by the State if his sentence is found to constitute a miscarriage of justice.

339. The designated channel for complaints is the Administrative Litigation Division of the Court of Audit. Article 30 of the Code of Judicial Organization stipulates that the Court of Audit shall comprise two divisions,

each composed of not less than three members. The first division hears administrative litigation proceedings in the conditions established by the law on the subject, while the second examines the investment accounts of the General Budget of the Nation, in accordance with the provisions of the Constitution.

340. Article 17 of the Constitution expressly establishes the right of the individual not to be sentenced without a prior trial based on a law existing before the perpetration of the act for which he is being tried, not to be tried by special courts and not to be tried more than once for the same act. In addition, completed proceedings may not be reopened, except for a favourable review of judgements in criminal proceedings established in cases provided for by procedural law.

341. The principle nullum crimen nulla pena sine lege is established under article 53 of the Penal Code, which also provides that no act or omission shall be punished, however immoral or criminal, if the law has not previously categorized it as an offence and does not specify a penalty for it. Article 1 of the Code stipulates that, in order to initiate criminal proceedings for an act or an omission, that act or omission must have been categorized as an offence by an existing law.

342. No one may be tried or punished more than once for the same criminal offence (C.C.P., art. 9). Article 428, paragraph 4, establishes as an exception the situation where a special plea may be entered concerning the res judicata on the basis of the same facts which gave rise to the proceedings.

343. Article 14 of the Constitution establishes the principle of the non-retroactivity of the law unless it is more favourable to the accused or convicted person. This constitutional principle is reinforced by the provisions of article 2 of the Civil Code:

> "The laws provide for the future; they do not have retroactive effect and they may not jeopardize acquired rights. New laws shall be applied to earlier acts only when they deprive persons of mere anticipated rights or of powers which were proper to them but which they had not exercised.
>
> New laws may not invalidate or jeopardize the acts performed or the effects produced under previous laws".

344. Article 103 of the Civil Code provides that estoppel is effected by the res judicata.

Article 15

345. Paraguayan positive law, in keeping with this article, recognizes and guarantees due process and specifically enunciates the principle of the non-retroactivity of the criminal law, except retroactivity that is favourable to the convicted person if lighter penalties are established later.

346. Provisions of this kind in our positive law have constitutional status. In the operative part of our Constitution, article 14 stipulates that: "No law shall have retroactive effect, unless it is more favourable to the accused or convicted person", a clear rule that does not allow any exceptions. Retroactivity applies only in criminal cases and is used for laws which are enacted after the offence has been committed and impose lighter penalties.

347. Article 58 of the Penal Code states: "When a new criminal law does not include among the offences an act punishable under the previous law, the effects of the proceedings and the sentence shall automatically lapse". This is obviously in keeping with the Constitution and, needless to say, an offender can avail himself of a law imposing lighter penalties when the new law alters the characterization of the offence, and he may do so automatically.

348. Another advantage, as reflected in the spirit of the law, is to be found in article 57, which states: "When a criminal law governs a punishable act at the time it is perpetrated and another law at the time of the sentence, the court shall always apply the less severe criminal law".

349. The nullum crimen nulla pena sine lege principle, specifically set out in the Penal Code and a natural corollary to the non-retroactivity of criminal laws, is formulated in the following terms: "No one shall be punishable for any act or omission, however immoral or criminal, if the law has not previously characterized it as an offence and has not specified a penalty" (art. 53). As to the penalty, article 54 states that: "No penalties may be imposed for the acts contained in this Code if they are not expressly set out in the provisions of the Code or are greater or lesser than those specified for the act or in any other way established by law, or with alterations or additions unauthorized by the actual legal text".

350. Due process, which guarantees that a penalty is imposed justly and without arbitrariness, has constitutional status, for in the section of the Constitution on procedural rights, article 17 stipulates that: "In criminal or in any other proceedings entailing a penalty or punishment, every person has the right: ... (3) Not to be sentenced without a hearing, on the basis of a law enacted before the proceedings, or to be tried by special courts, (4) Not to be sentenced more than once for the same act, not to be retried, except for favourable review of convictions in the cases established by procedural law"; this consistency with the Constitution none the less involves a limitation on the principle of general application, since it is procedural law that determines the cases in which retroactivity would apply.

351. The Code of Criminal Procedure, in keeping with the Constitution, establishes in article 1 that: "No criminal proceedings may be initiated except for acts or omissions characterized as offences in an existing law", and in article 3 that: "Judges and courts may not impose higher penalties than those established by law, except in cases where the discretion of the court is allowed".

352. These articles, found in ordinary criminal law, set forth the same principle as apply in military criminal law in time of peace, and with non-substantive changes in time of war. Act No. 844, containing the Code of

Military Criminal Procedure in Time of Peace and War, states in article 5 that: "No one may be tried by commissions or courts not established prior to the act concerned; otherwise the proceedings shall be null and void". This article also specifically prohibits courts from applying provisions other than those governing the case in question or placing a broader interpretation on the provisions to the prejudice of the person on trial. Article 10 sets out the principle of the non-retroactivity of the criminal law, except in the case of a law that favours the defendant: "No one may be sentenced without trial, in accordance with a law that has been enacted before the proceedings, except in the case of a subsequent law more favourable to the defendant".

353. Although the legal criteria underlying the provisions of our legislation have been described briefly, it can be inferred that they are fully in keeping with article 15 of the Covenant and are expressly guaranteed in law. Again, while it is important to recognize rights, it is even more important for such provisions to be effectively applied. The case law on this point is not, however, abundant, since criminal laws involving a reduced penalty are not very common.

354. Another important factor, because it impedes effective application of these guarantees, is the delay in judicial proceedings, for the fact that most prison inmates are in custody without a sentence, or at best for cases in which proceedings have been initiated, can be firmly ascribed to the administration of justice.

355. There is, however, one instance of removal of an offence from the statute books, namely Act No. 104-90, whereby adultery is no longer regarded as a criminal offence involving a criminal penalty. Consequently, the sentences have been revised and article 58 of the above-mentioned Penal Code automatically puts an end to proceedings or penalties for adultery.

Article 16

356. In Paraguay, legal capacity is fully guaranteed, even from the very time of conception.

357. Paraguayan positive law draws the classic distinction between de facto and de jure capacity, the former being the legal capacity to exercise one's rights oneself, and the latter being the legal capacity to hold certain rights. Our law allows limitations on legal capacity on grounds of minority or insanity, and these entail relative or absolute de facto disability. Although restrictions may also be placed on legal capacity, our legislation clearly states that it can never be absolute.

358. With reference to legal capacity, under Paraguayan law a human being acquires rights, admittedly anticipated rights, from the time of conception, provided he is born and remains alive, if only for some moments. The 1992 Constitution, in the section relating to the right to life, states in the first part of article 4 that: "The right to life is inherent in the human being. His general protection is guaranteed from the time of conception ...". The Civil Code states: "An individual has legal capacity from the time of conception to acquire property by donation, inheritance or legacy" although the requirement is that he should be born and remain alive, if only for some

moments. The Code for Juveniles, Act No. 903-81, "regulates the rights and guarantees of minors from the time of conception up to the age of 20, when the age of minority ends and the age of majority begins". Furthermore, the Code of Civil Procedure stipulates "de facto legal disability" in the case of persons about to be born.

359. With reference to de facto capacity, the Civil Code states in chapter II, on "De Facto Capacity and Disability", that "de facto capacity consists of the legal capacity to exercise one's own rights oneself. Under this Code, full capacity is enjoyed by any human being aged 20 or over who has not been judicially declared legally incompetent".

360. De facto legal disability may be absolute or relative. Absolute de facto disability disqualifies anyone from exercising any of his rights.

361. Under article 37 of the Civil Code, the following are deemed to be under a de facto legal disability: persons about to be born; persons under 14 years of age; the mentally ill; and deaf-mutes who are unable to make themselves understood in writing or by any other means. The article thus specifically enumerates the persons who are under an absolute de facto legal disability.

362. Under article 219 of the Code for Juveniles (Act No. 903/81), persons under 14 years of age cannot be charged with an offence. Minors who have reached the age of 14 and judicially disqualified persons are under a relative de facto disability (Civil Code, art. 38). This should also be regarded as a specific, i.e. exhaustive, enumeration. "A judicial declaration of legal disability is essential for a person who has reached his majority to be regarded as de facto incompetent".

363. In the case of minors, de facto legal disability ceases:

(a) For males and females aged 18, by a ruling of the competent judge who is informed of the person's agreement and that of the parents, or in the absence of both parents, of the guardian, so that they are authorized to engage in trade or any other lawful activity;

(b) For males aged 16 and females aged 14, on marriage;

(c) On the award of a university degree.

Emancipation is irrevocable.

364. Under article 39 of the Paraguayan Civil Code, legal disability for minors ceases, for males and females aged 18, by a ruling of the competent judge, who is informed of the person's agreement and that of the parents, or in the absence of both parents, of the guardian, so that they are authorized to engage in trade or any other lawful activity; for males aged 16 and females aged 14, on marriage; on the award of a university degree. Emancipation obtained in such circumstances is irrevocable.

365. A minor who has contracted marriage and been widowed, even without reaching the age of majority, preserves the right to emancipation, even if the marriage is dissolved.

366. Relative emancipation means a limitation on exercising certain rights in regard to legal documents. Anyone under the age of 20, by express provision of the law, cannot act as a witness to a marriage or to a last will and testament, but he may do so in matters not prohibited by the Code.

367. Emancipated persons may not act as guarantors, even with judicial authorization. In this regard, article 1458 of the Civil Code states that: "All persons able freely to administer their property may act as guarantors. Emancipated minors, even those with judicial authorization, may not".

368. When he becomes emancipated, a minor acquires full capacity, except for other prohibitions, such as making a will and taking out life insurance. He may engage in trade.

Article 17

369. In Paraguay, everyone is protected and safeguarded from arbitrary or unlawful interference with his privacy, family, home or correspondence or unlawful attacks on his honour and reputation, whether by State authorities or individuals or legal entities.

370. The Constitution, in chapter II, entitled "Freedom and Security of the Individual", states that everyone has the right to protection of his freedom and security. No one is compelled to do anything not required by law or deprived of anything not prohibited by law.

371. Article 32, on "Freedom of Assembly and Demonstration" establishes that persons are entitled to assemble and to demonstrate peacefully, without weapons and for lawful purposes, without need of any authorization, and they are entitled not to be compelled to take part in such events. The law may only regulate exercise of this right in public places, at specific times, protecting the rights of third parties and preserving law and order, as established by law. In this regard, we would refer to the comments on article 21 of the Covenant.

372. Article 33, on the "Right to Privacy", states that personal and family privacy, together with respect for privacy, are inviolable. The conduct of persons, so long as it does not affect public order as established by law or the rights of third parties, does not fall within the purview of the public authorities. The right to protection of one's privacy, dignity and reputation is guaranteed.

373. The rule is clear: protection of privacy and respect for privacy are fully guaranteed, for they are inviolable and may not form the subject of interference either by private individuals or by the public authorities, provided public order as established by law or the rights of third parties are not affected.

374. Article 34, on the "Right to the Inviolability of Private Premises", states that all private premises are inviolable. They may only be searched or closed down by court order, in accordance with the law. This may be done exceptionally in a case of flagrante delicto or to prevent the imminent perpetration of an offence, or to prevent harm to individuals or damage to property.

375. Article 397, on the "Right to Fair and Adequate Compensation" states that everyone is entitled to fair and adequate compensation for harm caused by the State. The law regulates this right. This principle fully embodies the liability of the State for harm caused by any interference with third persons. It is an equitable principle that prevents excesses by State bodies, which are required to make compensation in the event of damage or harm caused to property, belongings or persons. Regulations have not yet been issued for this article.

376. Under article 41 (1), on the "Right of Movement and Residence", every Paraguayan is entitled to live in his motherland. The inhabitants may move freely on national territory, change domicile or residence, leave or return to the Republic and, in accordance with the law, bring in or take out their property.

377. The situation of aliens who have not taken up full residence will be governed by the law in the light of the various international agreements (art. 41, para. 2) and, in the case of full residence, they shall not be obliged to leave Paraguay except by virtue of a court order (para. 3).

378. Under article 64, on "Communal Ownership", in chapter V, entitled "Indigenous peoples", the indigenous peoples have the right to communal ownership of land, the area and quality of which must be adequate for the maintenance and development of their characteristic ways of life. This land, which will be made available by the State free of charge, is not subject to seizure, is indivisible, non-transferable and imprescriptible, may not be used as security in respect of contractual obligations or leased, and is also exempt from taxation. Indigenous peoples may not be displaced or resettled without their express consent.

379. Article 109, on "Private Ownership", guarantees ownership of private property, within the limits established by law, in the light of its economic and social purpose, so as to make it available to everybody. Private property is inviolable. No one may be deprived of his property except by a court order, but expropriation is authorized as a matter of public utility or social interest, and each case is determined by law.

380. Payment of fair compensation, determined out of court or by court settlement, is guaranteed except in the case of non-productive large estates intended for agrarian reform, in accordance with the expropriations procedure to be established by law.

381. In regard to the right to ownership, article 1954 of the Civil Code is of essential importance. It states: "The law shall guarantee the owner the full and exclusive right to use, enjoy and dispose of his property, in keeping with the obligations set out in this Code and the social and economic function

assigned by the Constitution to the right to ownership. The owner shall also be entitled to reject seizure of the property and recover it from persons unjustly in possession of it".

382. The owner is entitled to secure observance of any legal document relating to the property, to rent or alienate the property for valuable consideration or free of charge, and if the property is immovable, to place a lien or secure a mortgage on it. He may renounce ownership and abandon the property, without conveying it to someone else.

383. The chapter entitled "Constitutional Guarantees", precisely for the purpose of guarding against unlawful or arbitrary interference, also contains a summary procedure to protect rights or immediately restore the proper legal situation. We refer to the institution of amparo (legal protection) which is set out in article 134:

> "Anyone who, as a result of a manifestly unlawful act or omission by an authority or a private individual, considers that he has been seriously harmed or is in imminent danger of being so harmed in regard to his rights or guarantees under this Constitution or the law and who, owing to the urgency of the case, cannot seek redress through the usual channels, may file an application for amparo to the competent court. The procedure shall be brief, summary and free of charge and is a public right of action for the cases established by law. The court shall be entitled to safeguard the right or guarantee and immediately restore the proper legal situation."

384. It should also be noted that, in the case of persons under a legal disability, an administrator shall be appointed by the court. The following may be lawful administrators:

(a) The husband, in the case of his spouse, and vice versa, if they have not separated;

(b) Sons or daughters of full age, when the father or mother is a widower/widow. In the case of more than one, the court shall choose the most suitable;

(c) The father or mother, in respect of unmarried sons or daughters, or widowers/widows who are in a position to act as administrators; and

(d) Brothers and sisters and uncles or aunts who may be guardians.

385. The person shall no longer act as administrator in the case of a court order lifting the prohibition or removing the legal disability and in cases where the guardianship ceases. In addition to the cases provided for in the Code, the court may provide an administrator for a person's property when the person abandons his home or disappears and his whereabouts are unknown, and leaves no one to administer his property. Similarly, the same provision applies when the whereabouts are unknown and it is impossible for the person who is absent to look after his property, provided in all cases that it is an urgent matter (Civil Code, arts. 266, 269, 271, 272, 273).

386. Section IV of the Civil Code, entitled "Force and Fear", states that "An agent shall be considered as being deprived of freedom when irresistible force is used against him. Intimidation shall be deemed to have been used when, as a result of unwarranted threats, someone causes him to be afraid, with good reason, of suffering imminent and serious danger to his person, freedom, honour or property, or those of the spouse, descendants, ascendants or collateral relatives. In the case of other persons, the court shall decide whether intimidation has occurred, depending on the circumstances" (art. 293).

387. The normal exercise of rights cannot entail unwarranted threats. However, when such a method is used to obtain excessive advantage from the other party, moral violence may be regarded as sufficient to invalidate the act (art. 294).

388. Rights must be exercised in good faith. Misuse of rights is not shielded by the law and the liability of the agent is incurred for the harm caused, either when he exercises rights for the purpose of wilful harm, even when not to his own advantage, or when such a course conflicts with the underlying purpose of the law in recognizing rights in question. This provision does not apply to rights which, by their nature or by virtue of the law, may be exercised by discretion (art. 372).

Family

389. The Constitution sets aside an entire chapter, chapter IV, to "Family Rights", for the purpose of defining this essential institution and protecting it against any arbitrary or unlawful interference. The family is the basis of society. Comprehensive protection of the family is to be encouraged and guaranteed. This includes a stable union of the man and the woman, the children and the community thus formed, with any of the ascendants or descendants (art. 49).

390. Naturally, a home is needed to set up a family, and the Constitution does not fail to cover this matter: "All inhabitants of the Republic are entitled to an appropriate dwelling. The State shall establish the conditions to implement this right and promote social housing plans, intended specifically for low-income families, by suitable methods of financing". In this regard, the National Housing Board (CONAVI) has built and continues to build affordable houses throughout the Republic, allocating them to persons who have no home, for a modest monthly sum.

391. Paraguayan positive law recognizes three kinds of family: the matrimonial family, the extra-matrimonial family and the adoptive family. The family, as a legal concept, covers all three kinds. In a broad interpretation which can be summed up as follows, a family is "all the individuals joined by the ties of a relationship stemming from matrimony or outside matrimony, either by consanguinity, affinity or adoption".

392. The State recognizes that the family is the basic unit of society and it constantly fosters the family's moral, cultural, economic and social well-being. "In short, we find that the family is a social and legal institution".

393. There is in law a concept which protects the family, consisting of assets known as "the family property". The Constitution establishes in article 59: "Family property is recognized as an institution of social value and the system governing such property shall be determined by law. It shall consist of the family dwelling or plot of land, and the movable property and implements of work, and they shall not be liable to distraint".

394. The Civil Code, regulating the above provision, stipulates in article 2072 that: "The institution of family property shall be enjoyed by the owner, his spouse, descendants under legal age or adopted children, until they reach their majority". If an unmarried owner has his publicly-acknowledged family under the same roof, he may also establish that the family property is to benefit the mother, their child or children, until the children reach the age of majority. No one may establish more than one urban or rural property as the family property.

395. The property immovable forming family property cannot have a tax value of more than the equivalent of 5,000 days of minimum wage (the minimum wage at the present time is 10,000 guaranies). It shall be registered and effective against third parties once it is included as such in the Property Register. This formality is not required for movable property.

396. The family's basic assets also include the beds of the owner, his wife and children, the furniture essential for the home, including stoves, iceboxes, fans, radios, televisions and family musical instruments, sewing and washing machines, and the tools required for the owner's occupation. Such property shall not be liable to distraint.

397. Anyone wishing to register the family property must submit a request to the civil and commercial court of first instance of his place of domicile, with evidence of his ownership and the other requirements specified by law.

Domicile

398. The Civil Code speaks of domicile in chapter VI. Article 52 contains a definition: "A person's real domicile is the place at which he has established his principal place of residence or business. The domicile of origin is the place of domicile of the parents on the day of the child's birth. The other is legal domicile, for all legal purposes, summonses, notifications, requests for payment, and so on".

399. A person may well have more than one residence. In the academic year, for example, he may live in Asunción and during the vacations in Villarica del Espíritu Santo. Article 55 establishes the principle of unity of domicile. A person may not establish more than one domicile. Under article 61, legal domicile and real domicile determine the jurisdiction of the authorities for the exercise of rights and fulfilment of obligations.

400. However, as an exception to the rule, in legal documents special domicile may be elected for particular purposes and this may involve an extension of jurisdiction. This rule does not run counter to the principle of unity of domicile, under which the principal domicile for business purposes is used. The exception to the rule does not recognize dual domicile but does maintain

the principle of unity. Four kinds of domicile are recognized in law, but always with the aforementioned principle of unity. Domicile is therefore: real; legal; of origin; and special.

401. Under the Penal Code, domicile is also protected against any interference. Thus, article 282 states that "Anyone who, without lawful reason, enters someone else's home or outbuildings or an enclosed area against the will of the owner or resident or anyone who is entitled to disallow entry, or anyone who does so in a treacherous or clandestine manner shall be liable to three to nine months' imprisonment". If the offence is committed one hour after sundown or one hour before sunrise, violently or by a person who is visibly armed, or by a group or riotously, the penalty is 9 to 18 months' imprisonment (invasion of domicile).

402. Again, a public official who, misusing his powers or without formalities required by law, enters someone's domicile against the will of the resident, is liable to 6 to 12 months' imprisonment. If he conducts a search or commits any other arbitrary act, the penalty is doubled.

Correspondence

403. The Paraguayan Constitution, in article 36, entitled "Right to Inviolability of Personal Documents and Private Communications" states: "Personal documents are inviolable. Records, regardless of the techniques employed, printed material, correspondence, writings, telephone, telegraph and other communications, collections or reproductions, evidence and objects of value as evidence, together with copies thereof, may not be examined, or reproduced, intercepted or confiscated, except by a court order in the cases specified by law, and provided at all times that they are indispensable in clearing up matters falling within the competence of the relevant authorities. The law shall determine the special methods for examination of commercial accounts and compulsory legal records".

404. Documentary evidence obtained in breach of the above requirements has no value in court. In all cases, strict confidentiality must be maintained in everything not relating to the matter under investigation.

405. The Civil Code, section IV, speaks of "Letters and Other Written Evidence" and states in article 410 that "Letters which, because of their content, are to be regarded as confidential in the opinion of the court, may not be utilized by a third party in proceedings or with the consent of the addressee, and shall automatically be rejected".

406. Letters addressed to an individual may be submitted by that individual in proceedings when they constitute a method of demonstration, in the litigation in which the person is involved, whatever the nature of the letters. Letters addressed to third parties may also be submitted with the writer's consent in proceedings in which he is not a party. The holder does not need such consent when the content of the letter is regarded as relating to him as well, or when it is to be regarded as having been delivered to the addressee.

407. A letter may also be invoked by a litigant when, in other proceedings, it has been submitted by the addressee or a third party. In other cases, the

refusal of the addressee for it to be used shall mean that it is impossible for it to be used, even if the letter is not confidential (Civil Code, art. 411).

408. In the Penal Code, with reference to correspondence, the first part of article 284 states: "The following shall be liable to a fine of 150 to 300 pesos:

(1) Anyone who opens a letter, telegram or sealed envelope, whether or not stamped, addressed to a third person;

(2) Anyone who takes another person's letter that is not closed, for the purpose of discovering the contents;

(3) Anyone who suppresses or causes the disappearance of a letter or envelope addressed to a third person, even if the letter is open".

409. A postal service employee who commits any of the offences listed in the preceding paragraph and who suppresses or wilfully delays the delivery or transmittal of a letter or communication is liable to 5 to 15 months' imprisonment and special disqualification for 2 years (art. 285).

410. Anyone who tampers with correspondence, reveals the secrets it contains, with serious prejudice to the honour, reputation or interest of the victim or his family, is liable to one to three years' imprisonment. If the guilty person is a postal service employee he is liable to two to four years' imprisonment and special disqualification for the same period.

Security regarding personal information

411. It is important to mention the effective measures taken to ensure that information concerning an individual's private life does not fall into the hands of unauthorized persons and is not improperly used. Paraguay protects the right to check whether personal data and records are correct; otherwise, or if the data and records have been established in breach of the provisions of the law, anyone is entitled to ask for them to be rectified or removed. Article 28 of the Constitution states that "The right of individuals to receive accurate, proper and impartial information is recognized".

412. Public sources of information are free to everyone. The law regulates the terms and conditions, periods and penalties to make sure that this right is effectively implemented.

413. Anyone affected by the circulation of false, distorted or ambiguous information is entitled to require it to be rectified or clarified by the means of circulation used and under the same conditions as it has been disclosed, without prejudice to any other rights to compensation.

414. Identity papers, permits and records of individuals may not be confiscated or held by the authorities. Individuals may be deprived of them only in the cases specified by law (Constitution, art. 35).

415. Anyone may obtain the information about himself or about his property contained in official records or private records of a public character and learn what use is made of it. He may request the competent court to update, rectify or withdraw information if it is incorrect or legitimately affects his rights (Constitution, art. 135).

Honour and reputation

416. The Penal Code, in the first part of article 369, sets forth a concept of calumny and states that "An individual commits calumny when he falsely attributes to a person one or more particular criminal offence. A person guilty of calumny shall be liable to one eighth to one quarter of the penalty applicable to the acts attributed, together with a fine not exceeding 2,000 pesos".

417. An individual commits defamation when, before one or more persons, whether together or separately, but in such a way as to spread the news or public document or written material or cartoons or drawings of any kind, circulated among or exhibited to the public, he attributes to a particular person offences liable to the public right of criminal action, without specifying the offences, or to the private right of criminal action, even although the offences are specified, or acts which could expose the aggrieved party to disciplinary procedures or to public opprobrium or a lack of morality which might considerably prejudice his honour or interests. A person guilty of defamation is liable to 2 to 22 months' imprisonment and a fine of up to 2,000 pesos (art. 370).

418. Anyone who, other than in the cases specified, insults, discredits, dishonours or belittles someone else with the spoken word, written material or other action commits the offence of injurious conduct. If the injurious written material is published in a newspaper or periodical, the guilty person is liable to one to five months' imprisonment and a fine of 400 to 1,000 pesos (art. 372).

419. In the case of calumny, defamation or injurious conduct in foreign countries, persons who from the territory of the Republic have sent the articles or have given orders for them to be inserted or contributed to the dispatch of such items with the obvious intent of spreading calumny, defamation or insult are liable to court action (art. 378).

420. Written material, drawings and other means of publicity used to commit the offence shall be confiscated or rendered useless or when it is not possible to render the material useless because of its nature, the court's conviction is to be noted in the margin (art. 379).

421. It should be pointed out that, in the offences mentioned, proceedings are taken only at the request of the injured party. In the case of injurious conduct, the court shall always take into consideration, for the purposes of the real and effective seriousness of the offence, the social status of the aggrieved party and offender, as well as the circumstances of time and place (arts. 382 (1) and 383).

Article 18

422. The freedoms laid down in the Covenant are fully recognized in our legislation. These constitutionally-ranked rights are recognized as the foundation of a democratic legal order and are covered in article 24 of the Constitution: "Freedom of religion, worship and ideology are recognized, with no limitations other than those established by the Constitution and the law ...".

423. It should be mentioned that the constitutional rule in question enshrines different elements from those of the Covenant, speaking as it does of freedom of religion, worship and ideology and not belief, conscience and religion. This difference, however, is of no importance since if this provision is studied in connection with other constitutional rules laying down freedom of expression (art. 25), demonstration (art. 32), dissemination of thought and opinion (art. 26), it can be seen that those rights are also explicitly recognized.

424. Freedom of religion and belief are understood to be absolute rights and therefore cannot be restricted at any time or under any circumstances, even during a state of emergency, whereas the freedom to manifest religion or belief can be subject to limitations for the sake of public order or other general interests.

425. In our constitutional legislation, however, these rights are given general recognition always with the explicit proviso that the only limitations on them are those established by the Constitution and by law. This is understood to mean that such limitations are always confined to external manifestation of such beliefs, since it is the only case in which the rights of third parties might be affected.

426. An important new development with respect to our previous Constitution is the fact that no religion has official status, and that being a Roman Catholic is no longer a prerequisite for becoming President of the Republic. These two provisions are consistent with the religious equality and ideological pluralism explicitly laid down in the Constitution.

427. It should be noted, however, that the majority of Paraguayans are Catholic, which explains the provision contained in article 82 of the Constitution, explicitly recognizing the leading role played by the Catholic Church in the historical and cultural shaping of the nation and the stipulation in article 24, paragraph 2, that the Government's relations with the Catholic Church shall be based on independence, cooperation and autonomy. As for the existence of other religions together with the Catholic religion, the reader is referred to article 24 *in fine* of the Constitution, which guarantees the independence and autonomy of Churches and religious denominations, with no limitations other than those established by the Constitution itself and by law.

428. Undoubtedly, the above-mentioned constitutional provisions reflect a broad democratic spirit, but they entered into force relatively recently, since they date from 20 June 1992. Although the previous Constitution was not

sparing of such rights, it was true that the Catholic religion, besides having a great influence on the people, was the religion of State, and it may be rightfully said that it enjoyed de facto and de jure privileges.

429. Article 91, paragraph 3, of the Paraguayan Civil Code grants the Catholic Church legal status in a different way from that of other religions, which have to follow legal procedures in order for their status to be recognized and for them to be able to operate as an institution and achieve the goals of the religion. There are, however, no limitations of any kind, either legal or ideological, on specific beliefs or religions restricting, limiting or impairing information or organization activities by persons having a common religion or belief, except for the limitations based on public order, morals and the fundamental rights and freedoms of others.

430. Another provision of the Constitution that is consistent with the provisions of the Covenant is in article 74 in fine: "Freedom to teach is also guaranteed with no requirements other than appropriateness and ethical integrity, as well as the right to religious education and to ideological pluralism". There are many private educational institutions in our country that teach the Catholic religion, and there are also educational institutions based on other religions, such as Baptist, Protestant and Anglican, although to a lesser extent than is the case with Catholicism. State high schools do not teach any religion in particular but simply provide pupils with a comprehensive view of all religions and their foundations as part of the basic material of the school curriculum. The Catholic University of Asunción is a prestigious high-level academic institution which also professes pluralism, since being a Catholic is not an entrance requirement.

431. One constitutional provision which relates to paragraph 2 of the article of the Covenant under discussion is that contained in article 24 in fine which protects individuals from being disturbed, investigated or obliged to testify because of their beliefs or ideology. This means protection of the exercise of such freedoms.

432. In article 291, the Penal Code stipulates two to six months' imprisonment for anyone who, through acts, violence or threats prevents or disturbs ceremonies of the Catholic religion, or any of the other religions accepted in the Republic, and article 292 specifies one to five months' imprisonment for anyone who, by means of insults, disturbances or disorder publicly ridicules any of the religions in a place where religious acts or functions are being celebrated, and the same penalty for anyone who (a) by acts, words or threats insults religious objects, whether in places used for worship or in public ceremonies held by that religion, (b) anyone who by acts, words or threats insults a clergyman in the exercise of his religious duties and anyone who (c) destroys, damages or spoils monuments, statues or inscriptions in temples or places reserved for a religion.

433. Therefore, the criminal law provides an effective guarantee of the right to practise the religion or belief of one's choice. Act No. 383 of 18 December 1972 established the Department of Worship, which is responsible for everything relating to the exercise of religious responsibilities, and specifically to the general welfare of the nation and the achievement of the goals of the State. To that end, liaison, registration and information

services are provided for the above-mentioned religions and organizations. According to data provided by the Department of Worship, 117 Catholic congregations, 76 female and 41 male, and 163 non-Catholic religious organizations are registered in our country.

434. It should, however, be explained that when the Department was established, the official State religion was Catholicism, and that therefore one of its goals was to preserve, facilitate and promote relations between the State and the Catholic religion in the framework of the institutional system laid down by the Constitution and the law.

435. Owing to the progress in this field reflected in the new Constitution, the political will exists to promote the enactment of a new law on religious worship in our country, on the basis of equality, cooperation and respect. Leaders of the most representative churches are being brought together for the purpose of achieving that goal.

Conscientious objection

436. Recognition of this freedom is an extremely important constitutional development. The new Constitution explicitly guarantees it in article 37, as follows: "The right to conscientious objection on ethical or religious grounds is recognized in the circumstances permitted by the Constitution and the law". Conscientious objection for these reasons may be invoked in order not to perform compulsory military service, something which represents a significant advance in the establishment of fundamental rights.

437. Confirmation of this right is found in article 129, paragraph 5, of the Constitution, which stipulates: "... conscientious objectors shall perform service for the civilian population in welfare centres designated by law and under civil jurisdiction". It also states that, "the rules governing the exercise of this right shall not be of a punitive nature or impose heavier burdens than those established for military service".

438. These constitutional provisions, for which no regulations have been issued to date, have provided sufficient basis for five young Paraguayans to have declared themselves to be the first conscientious objectors to date. They went before the Human Rights Commission of the Chamber of Deputies of the National Parliament to request due guarantees and encourage the introduction of an appropriate mechanism for conscientious objectors.

439. On that occasion, given the lack of regulations, the first conscientious objectors went before a notary to declare their desire not to perform military service, stressing that such a course might be one way to make the declaration, but others should be found, especially for young people in the interior who might have difficulties following such a procedure.

440. The Directorate of the Mobilization Service of the armed forces has urged the Legislature to speed up the consideration of a law on this matter in order for objectors not to be inconvenienced by the lack of a discharge, i.e. the document that was used to show young men had completed compulsory military service until the present Constitution was promulgated.

441. Conscientious objectors, for their part, have indicated that they wish the law on conscientious objection to be enacted without haste in order to avoid impairing the constitutional guarantee that has clearly been stipulated. The law should also introduce a body to organize and monitor the social services that conscientious objectors will perform instead of military service.

442. As to the regulations on this constitutional guarantee, many meetings have been held in both the governmental and non-governmental circles on the topic of "The role of the armed forces in democracy and conscientious objection", which has led to discussion among young people and scrutiny of the ethical grounds for the exercise of this right. This discussion will no doubt be to the benefit of effective respect for the rights and freedoms laid down in the Constitution.

Article 19

443. The rights set out in article 19 of the Covenant also have constitutional status in our legislation and are generally enunciated with the same limitations. Therefore, the Constitution guarantees freedom of expression and thought, as well as the dissemination of thoughts and opinions without any form of censorship and with no other limitations than those laid down in the Constitution, for which reason no law shall be passed that might restrict or hinder them (art. 26).

444. Everyone has the right to process, provide or disseminate information and the right to use any effective legal instrument to achieve those goals.

445. The Constitution also deals with the use of the mass media in article 27, and stipulates that the media shall be used in the public interest, for which reason their operations cannot be halted. The Constitution also stipulates that it is not acceptable for the press to lack responsible management.

446. There is an express prohibition on any discriminatory practices in providing inputs for the press, such as interfering with radio frequencies or obstructing the free movement, distribution and sale of periodicals, books, magazines or other publications with responsible management or authorship. The foregoing guarantees pluralism in information.

447. The above-mentioned article also quite appropriately stipulates that the law shall govern advertising in order better to protect the rights of children, adolescents, illiterates, consumers and women.

Right to information

448. The Constitution recognizes the right of individuals to receive truthful, responsible and impartial information. Public information sources are free for everyone and regulations are to be issued governing them in order to enforce this right. In addition, anyone who has been harmed by the circulation of false, distorted or ambiguous information is granted the right to demand corrections or explanations by the same method of circulation and under the same conditions as it was disclosed, without prejudice to any other rights to compensation.

449. Article 29 guarantees freedom to practise journalism in any of its forms, not subject to prior authorization, and also guarantees that journalists will not be forced to act against the dictates of their conscience or reveal their sources of information in the performance of their duties. These constitutional provisions undoubtedly reflect a firm resolve to protect the rights in question.

450. The Constitution also deals with electromagnetic communication signals and stipulates that the broadcasting and propagation of such signals are in the public domain, which should promote their full use. Article 30 also lays down regulations in this area, establishing that equal opportunity of access to the enjoyment of the electromagnetic spectrum shall be ensured, provided that these elements are not utilized to undermine individual or family privacy or any of the other rights laid down in the Constitution.

451. It should be noted that the above-mentioned articles were the subject of heated debate at the national constitutional convention when the new Constitution, dated 20 June 1992, was elaborated. The new Constitution is a significant improvement over the old one in that it provides a broader and more comprehensive set of regulations for anything having to do with freedom of opinion and of the press. As things stand, these provisions raise more than a few difficulties for regulations have still to be issued to govern some of them.

452. Recently, the Government vetoed a controversial law, Act No. 299 of 16 December 1993, which laid down rules guaranteeing the operation of private radio and television transmitters; the legislation considered to be unconstitutional was returned to Congress. This law became unconstitutional because it envisaged an unequal and unfair situation for those who wanted access to the radio and TV media and also introduced privatization of channels and frequencies, depriving the State of its constitutional prerogative to administer them.

453. This and other attempts to enact a law establishing the responsibility of the press have as yet come to naught. This is offset, however, by the fact that our Constitution provides detailed regulations for guaranteeing freedom of expression, the press, information, and the free exercise of journalism, which are not to be impaired on any pretext whatsoever.

454. Throughout the dictatorship in our country, until 2 and 3 February 1989, these were the rights and freedoms most violated, which explains and justifies the zealousness with which the drafters of the Constitution have treated these subjects.

Article 20

455. Article 20 of the Covenant was covered by some articles of the previous Constitution, but the Constitution of 20 June 1992 does not deal with it explicitly, although it may be considered to be covered in several articles that are perfectly in keeping with its spirit, and lay down the principles of equality and non-discrimination.

456. Under the previous Constitution, the regulations on the matter under review were contained in two laws, Act No. 294, relating to the defence of democracy, and Act No. 291, relating to the defence of public order and freedom of the individual, which have now been totally repealed because of their adverse effect on Paraguayan society. They had been used to bolster the repressive regime of the Government of the previous President, Alfredo Stroessner, which deprived many people of liberty and was responsible for countless affronts to human dignity.

457. Chapter III, article 46, "On the Equality of Individuals", stipulates "All residents of the Republic are equal in dignity and rights. No discrimination shall be permitted. The State will remove obstacles and prevent factors that maintain or encourage such discrimination". Any protective measures adopted in respect of unjust inequalities shall be regarded not as discriminatory but as egalitarian.

458. The State will promote policies aimed at avoiding violence within the family and other factors destroying the solidarity of the family (Constitution, art. 60).

459. Indigenous peoples are guaranteed the right to participate in the economic, social, political and cultural life of the country in accordance with their customary usages, the Constitution and national laws. (Constitution, art. 65).

460. Article 24 of the Constitution recognizes religious freedom, freedom of worship and ideology and stipulates that no religion shall have official status; it also states that no one may be disturbed, investigated or obliged to testify because of his beliefs or ideology.

461. No discrimination whatsoever shall be permitted between workers on grounds of ethnic group, sex, age, religion, social status and political or trade union preferences (Constitution, art. 88).

462. The Republic of Paraguay renounces war but maintains the principle of self-defence. This statement is compatible with Paraguay's rights and obligations as a member of the United Nations and of the Organization of American States or as a party to integration treaties (Constitution, art. 144).

463. Men and women have equal civil, political, social, economic and cultural rights (Constitution, art. 48).

464. Finally, regarding rights and guarantees not enumerated, article 45 states: "The enumeration of the rights and guarantees contained in this Constitution should not be understood as denying others which, being inherent in the human personality, are not expressly mentioned. The absence of laws regulating them may not be invoked to deny or impair any rights or guarantees."

Article 21

465. Consistent with essential democratic principles, the right to peaceful assembly is laid down in article 32 of the Constitution, which stipulates that individuals have the right to meet and demonstrate peacefully. This right is constitutionally protected provided it is exercised for lawful purposes and without weapons. Any meeting or demonstration that complies with these conditions may be public or private, political or of any other nature and in no case will authorization have to be requested. The right not to have to participate in such events is also guaranteed.

466. The Constitution stipulates that the law only shall regulate the exercise of this right in public places, at specific times, to safeguard the rights of third parties and public order as established by law. Act No. 14/90 lays down regulations for the exercise of this constitutional right. The Act defines what should be understood as public assembly, i.e. meetings held in public places such as squares, streets, parks or places open to the public such as churches, theatres or sports grounds.

467. The Act establishes the perimeter within which such events may be conducted in the city centre and the times at which they may be held, i.e. from 7 p.m. to midnight on workdays and from 6 a.m. to midnight on Sundays and holidays. The provisions of the Act also establish permanent places for public meetings in the city of Asunción and a fixed route according to a pre-established timetable. These provisions refer to the city centre area, there being no such restrictions for other areas.

468. The law also establishes a prohibition on holding public meetings or demonstrations opposite the López Palace and military or police headquarters. However, delegations of a political, trade-union, social or cultural nature may meet peacefully opposite the López Palace (Government centre) during the day, in numbers not exceeding 20 persons, in order to prepare or submit petitions to the Executive.

469. The forces of law and order must protect public meetings and demonstrations conducted in conformity with the provisions of the above-mentioned Act and prevent third parties from using provocation to alter their peaceful nature or avoid the possibility of disturbances or acts during the demonstrations that are contrary to morality or decent behaviour.

470. To render these guarantees effective and to ensure that this right is exercised on an equal basis, the holding of public meetings and demonstrations requires a prior communication, during working hours, at least 24 hours in advance, to the Capital Police or the police authority in the provinces. The police authority in question can object to the holding of the meeting within a maximum of 12 hours from the time of submission of the communication by the organizers, based solely on a previous request of the same nature. In any event, appeal against a refusal may be made to the Ministry of the Interior or an application for amparo (enforcement of constitutional rights) can be filed before the competent judge.

471. The following are not subject to the provisions of the Act: (a) religious processions, (b) meetings held by political parties and other groups on their own premises or on closed premises for their own purposes, (c) meetings held in private homes and social, religious, athletic or other types of cultural centres, and (d) meetings or demonstrations numbering no more than 20 persons.

472. The Act, which does not set conditions for peaceful meetings and demonstrations but lays down rules for conducting them, guarantees the legal limits within which the police force must act, so as not to impair this constitutional freedom.

473. The latest elections, held on 9 May 1993, bore eloquent witness to the fact that this right is fully exercised; it has been used for public meetings by all political sectors in the country with no restrictions whatsoever other than those pertaining to public order and the rights of third parties.

Article 22

474. Article 42 of the Constitution stipulates that all persons are free to enter into an association or a union provided its aims are lawful; no one may be compelled to belong to a particular association. The establishment of secret and paramilitary associations is prohibited.

475. Under the Civil Code, in order to operate, associations must obtain prior authorization from the Government or register with the appropriate registry; appeals may be made through the courts against administrative decisions whereby such recognition is granted or denied (Civil Code, arts. 93 and 102). Associations that are recognized as being in the public interest as well as those registered as special purpose associations are required to set out their aims in public statutes.

476. The Constitution also upholds the freedom of citizens freely to form political parties or movements in order to participate democratically in the election of the authorities established by the Constitution and by law, and to decide national policy. (Constitution, art. 125).

477. This recognition that political movements can participate on equal terms with the traditional parties in national politics has led to mass involvement of Paraguay's citizens in electing their national authorities.

478. Under article 126 of the Constitution political parties and movements are prohibited from receiving financial support, orders or instructions from foreign organizations or States and from organizing themselves so as to use or advocate political violence and from pursuing the violent overthrow of the system of freedom and democracy or jeopardizing the existence of the Republic.

479. In the presidential elections held in May 1993 for the term of office from 1993 to 1998, the people's will, as expressed through the ballot box, was followed, and the three leading political parties are represented in national, departmental and municipal governments.

480. The 1992 Paraguayan Constitution made a great step forward by granting public-sector workers the same right as private-sector workers to form trade unions and to strike in order to struggle for better working conditions; numerous public-sector unions have already been registered and there are even sectors, such as the judiciary with two unions.

481. Article 96 of the Constitution guarantees the right of both public- and private-sector workers to form trade unions without the need for prior authorization while article 119 determines the system for electing trade union officials, which must observe the principles and rules of the right to vote.

482. A scrutiny of the way in which workers have used the right to form trade unions shows that a total of 526 trade unions were registered from 1962 to 1989; from 1989, when the course of Paraguay's history began to change, to 1992, i.e. barely four years, a total of 472 trade unions were formed, almost the same number; in the period from January to December 1992, after the same right had been extended to public-sector employees, a further 129 trade union organizations were registered, most of them in the public sector. At the time of writing there is virtually no part of the public sector without a trade union.

Legislation on freedom of association

483. Since November 1993, trade union activity has been regulated by the new Labour Code, Act No. 213. Article 283 of the Act stipulates that all workers and employees, without distinction as to sex or nationality and without prior authorization, are entitled to form organizations whose purpose is to study, defend, promote and protect their occupational interests and to improve the social, financial, cultural and moral circumstances of the members. This right extends to public-sector workers and officials.

484. Trade union organizations are entitled to draw up their administrative statutes and regulations, freely elect their officials and representatives, and organize their administration and lawful activities. Government authorities may in no way intervene to restrict this right or to hamper its exercise (art. 285).

485. Trade unions in business firms must have a minimum of 20 members when they are founded, while industrial trade unions must have a minimum of 300 members. In the case of State employees, a minimum of 20 per cent of the number of employees is required (art. 292).

486. The following may belong to trade unions:

(a) Paraguayan or foreign workers of either sex, aged over 18;

(b) All workers who do not act as the firm's representatives under article 25 of the Labour Code;

(c) Each worker may only join the trade union of his firm, industry, occupation, trade or institution;

(d) Members of the organization's executive board must be of legal age as well as active members of the trade union.

487. Registration of a trade union vests the union with legal capacity for all legal purposes in conformity with current legislation. It may thus: (a) enter into individual or collective agreements on working conditions, assert and exercise the rights under such agreements or the law; (b) report to the proper authorities any acts that are prejudicial to the collective interest of the profession or occupation concerned; (c) receive exemption from any municipal or State tax on its investment funds and agencies or employment exchanges; (f) form federations or confederations and (g) perform any lawful act conducive to the achievement of the aims laid down by labour law (Labour Code, arts. 301 and 303).

488. Trade unions may not:

(a) Participate in party political affairs or electoralist movements and religious affairs;

(b) Use coercion to deny freedom in employment, in industry and trade;

(c) Promote or support campaigns or movements for the members to disregard, either individually or collectively, the precepts of the law or the decisions of the competent authority;

(d) Promote or foster de facto disregard of the legal or contractual rules to which members are subject, without advancing any reasons or grounds whatsoever;

(e) Order, advocate or sponsor any acts of violence against the authorities or against employers or third parties (Labour Code, art. 304).

489. The rights of occupational organizations include the right to strike and the right of lock-out. These rights are covered by the Constitution and the Labour Code. Article 98 of the Constitution establishes the right of public-sector workers to strike in the event of a conflict of interests, on an equal footing with private-sector workers. Employers have the right of lock-out under the same conditions. Labour legislation guarantees the right of all workers who are not self-employed to declare a strike. If hospital, water supply and electricity workers declare a strike, minimum essential services must be provided for the population, as they are indispensable to the community (art. 362).

490. Pursuant to the Constitution, members of the armed forces and the police may not belong to trade unions (art. 96, first part). In addition, article 360 _in fine_ of the Labour Code stipulates that members of the armed forces and the police do not have the right to strike.

491. Freedom of association and freedom to form trade unions is guaranteed by a number of international instruments which Paraguay has ratified, including the Pact of San José, Costa Rica (art. 16), ILO Conventions No. 87 concerning

Freedom of Association and Protection of the Right to Organise, and No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, and these provisions are complied with in full.

Article 23

492. Paraguay's Constitution enunciates, in a manner similar to article 23 of the Covenant, all the rights and guarantees necessary to protect and ensure the advancement of the families which make up the Paraguayan people. Accordingly, article 49 stipulates that "The family is the basis of society. Comprehensive protection for the family shall be encouraged and guaranteed. Such protection shall extend to any stable union between a man and a woman, to their offspring and to the community made up of either of the parents and their descendants."

493. The final part of this constitutional provision is of great importance for the attainment of equality. Previous legislation made it extremely difficult for women heads of household to acquire ownership of rural land as men were always considered to be the head of the household.

494. The Constitution recognizes and protects both matrimony between a man and a woman, which it considers to be one of the basic elements in forming a family, and de facto unions which, provided they are stable, are similar to matrimony.

495. Act No. 1/92, whereby the Civil Code was partly amended, contains provisions along the lines of those of article 23 of the International Covenant on Civil and Political Rights regarding the family and the inherent rights of its members, both as members of the group and as individual human beings. Article 83 of the Act stipulates that "A de facto union between a man and woman who voluntarily live together in a stable, public and exclusive relationship, when both of them are of the minimum age required to enter into matrimony and are subject to no impediment that would annul their marriage, falls within the scope of this Act."

496. After having lived for 10 years in a de facto union, the partners may register their union by making a declaration before the registrar or magistrate, thereby placing their union on an equal footing with a lawful marriage, including for the purpose of inheritance, and the couple's children are considered as born in wedlock.

497. The Act also stipulates that for the purpose of application and interpretation of the Act itself, family unity, the well-being and protection of children under legal age and equality of spouses are fundamental principles. These are principles of public policy and may only be charged with specific authorization of the law (art. 2).

498. As regards paragraph 2 of the article, concerning the capacity of persons to marry, Paraguayan legislation stipulates that minors of either sex may not marry until they are 16 years of age; apart from a special dispensation in extraordinary circumstances, they may marry after the age of 14 with the permission of the judge of the juvenile court. Persons still bound by the bonds of matrimony may not marry, nor may persons suffering from a chronic

contagious hereditary disease, except in the case of matrimony in extremis or for the benefit of the joint children; persons suffering from chronic mental illness that disturbs the mind, albeit temporarily, deaf and dumb persons, blind and dumb and blind and deaf persons who are incapable of unequivocally expressing their will are also prohibited from marrying (Act No. 1/92, art. 17).

499. Article 18 specifies that the following persons may not marry each other:

(1) Blood relatives of the direct matrimonial or extramatrimonial line and collateral relatives of the same class to the second degree;

(2) Direct relatives;

(3) An adoptive parent and his descendants may not marry adopted children and their descendants. Adopted children may not marry the spouse of the adoptive parent nor may the latter marry the spouse of the former. Adopted children of the same adoptive parent may not marry each other nor may they marry the adoptive parent's biological children;

(4) A person convicted as the perpetrator, instigator or accessory to the wilful, attempted or thwarted homicide of one of the spouses may not marry the other;

(5) An abductor may not marry the abducted person during the period of abduction or until three months after the violent abduction has ceased.

500. Pursuant to article 19 the following may not marry:

(1) A guardian and his or her under-age or legally disqualified ward until such time as he is no longer the guardian and the accounts for his guardianship have been approved, or in the case of a legally disqualified person until the latter's legal capacity has been restored and the accounts relating to the wardship approved. Anyone who breaches this rule shall lose any payment to which he is entitled, without prejudice to any liability incurred as a result of improper performance of his duties;

(2) A widow may not marry until three hundred (300) days after her husband's death, unless she previously gives birth; the same provision applies if a marriage has been annulled. The only penalty for a woman who infringes this provision shall be loss of any property she may have received free of charge from her husband;

(3) A widower or widow who fails to provide proof that he or she has drawn up a legal inventory, with the participation of the guardianship office, of the property administered by him or her and belonging to his or her under-age children; or failing this, if he

> or she has not made a sworn statement that his or her children possess no property or that he or she has no children under his or her parental authority.
>
> Any breach of this rule shall entail loss of legal usufruct of the property of the children.
>
> This rule also applies when a marriage has been annulled and in the case of children born outside wedlock who are under the father or mother's paternal authority."

501. In accordance with the provisions of the Covenant, Paraguayan legislation requires the partners' free consent for a marriage to be valid (Act 1/92, arts. 4 and 5). The requirements for a marriage to be valid are set out in Act No. 1266/87 (Civil Registry Act).

502. The main legal requirements are as follows:

(a) The marriage certificate must give the name and surname, age, nationality, occupation, place of birth and residence of the parties; the name and surname, age, nationality, occupation and residence of the parents; the name and surname of the previous spouse, if one or both spouses was married previously; if appropriate, the consent of the parents or guardians or the court's permission; an indication as to whether there was any objection and whether it was overruled; the statement by the parties and by the registrar that they are united by the bonds of matrimony; recognition of any children born out of wedlock and the personal particulars of the witnesses;

(b) The marriage must be solemnized in the Registrar's Office and in his presence or on any other premises outside his Office with his approval;

(c) A religious marriage shall be solemnized on presentation of the civil marriage certificate.

503. Act No. 1/92 also recognizes the following marriage settlements:

(a) joint ownership of the property acquired, under joint administration;

(b) the regime of deferred participation; and (c) separation of property.

504. The Constitution stipulates that "parents have a right and duty to care for, feed, educate and support their children while they are under age. Failure to comply with the duty to provide food shall be punished by law" (art. 53). It also stipulates that "no one may be deprived of his freedom for debt, except on the order of a competent judicial authority for failure to comply with the duty to provide food, and as a substitute penalty for fines or legal security" (art. 13).

505. This provision of the Constitution gives greater weight to the parental obligation to provide food, as it stipulates that the competent authority may punish failure to do so by a prison sentence.

506. Positive law contains the following provisions on the rights and duties of the spouses during matrimony: men and women possess equal civil capacity regardless of their civil status; husband and wife have equal duties, rights and responsibilities; they must show mutual respect, consideration, faithfulness and support; they are both required to inform each other of the economic situation of their joint property (Act No. 1/92, arts. 1, 6 and 46).

507. The costs of maintaining the family and under-age children and the administrative expenses of the family community arc charged to the community's earnings (art. 50).

508. As regards custody, in the event of divorce, which is one way of dissolving the community, paternal authority reverts to the spouse to whom the juveniles court awards custody; the other spouse is legally required to provide alimony. The father and mother exercise paternal authority over the children born of the marriage. Each spouse exercises paternal authority over any under-age children that are not the couple's own (Act 903/81, arts. 67 and 70).

509. Divorce, which dissolves marriage, and allows spouses to remarry, was introduced in Paraguay under Act No. 45/91 (art. 1). A divorce is awarded in the following cases:

(a) On the grounds of an attempt on the life of one of the spouses by the other;

(b) On grounds of immoral conduct or incitement to commit adultery, prostitution or other vices or offences;

(c) On grounds of brutality, ill-treatment or grave insult;

(d) Habitual drunkenness or repeated drug taking;

(e) Permanent serious mental illness, determined by a court;

(f) If one of the spouses wilfully and maliciously abandons the home;

(g) Adultery and de facto separation of more than one year without any desire for reconciliation on the part of either spouse (art. 4).

510. After three years of marriage the spouses may file for a divorce and may not remarry for a period of 300 days after the divorce has become final (arts. 5 and 10).

Article 24

511. The Paraguayan Constitution and the law contain detailed provisions relating to the right of children to protection, both by the family, by society and the State. The Constitution states that "the family, society and the State shall have the duty to guarantee the child's full and harmonious development and full enjoyment of his rights, and shall protect him against neglect, malnutrition, violence, abuse, trafficking and exploitation. All

persons shall have the right to demand that the competent authority complies with these guarantees and punishes those who infringe them. In the event of conflict, the rights of the child shall be paramount (art. 54).

512. The Code for Juveniles stipulates that any measures adopted shall take into account the best interests of the child, and governs the rights and safeguards applicable to children from the moment of conception until the age of 20, which is the age of majority. The State is responsible for ensuring that parents perform their duty to maintain, support and educate their children. Orphaned children are guaranteed the right to be brought up in a family environment, in a home or appropriate institution. An adopted child is entitled to the same status as the offspring of the marriage, and adoption is only granted in the best interests and for the benefit of the adoptive child.

513. Where the health of children is concerned, the Code stipulates that it is the responsibility of the parents to ensure that their children receive the necessary medical attention; it is compulsory to have children vaccinated against endemic diseases and the Ministry of Health periodically carries out large-scale vaccination campaigns.

Indigenous children and young people

514. It is estimated that there are 80,000 indigenous children in 17 ethnic groups belonging to five different linguistic communities; until approximately the age of 4, children stay with their parents. Subsequently, they join in the life of the community on an equal footing with adults.

Orphans and abandoned children

515. The Directorate-General for the Protection of Juveniles is responsible for taking and looking after these children. There are 73 children's homes in the capital. The Guardianship and Correctional Juvenile Courts enjoy the support of the National Children's Home in activities in this field.

516. The adoption of juveniles is a measure envisaged in the Code for Juveniles to offer a solution to abandoned children. Community schemes such as "de facto family placement" have been devised to provide care for children and adolescents in this situation.

Child victims of abuse

517. In addition to the Directorate-General for the Protection of Juveniles, there are other centres that receive complaints or provide legal and psychological assistance to victims, including the "Twenty-fifth of November" Women's Group, the Health Centre under the auspices of the Ministry of Health, the Family Department of the Metropolitan Police, etc. Guardianship and correctional juvenile courts provide minors in these circumstances with assistance on a continuing basis by ordering temporary placement in the National Children's Home or in other institutions whose statutes authorize them to take in juveniles who are at risk.

Disabled juveniles

518. The Department of Special Education in the Ministry of Education is responsible for meeting educational priorities for this population group, and supervises the running of a free official medical and social assistance unit for disabled persons, INPRO. There are also other private organizations that offer assistance in the fields of health, education and work to disabled children and young people, such as ARIFA, DENIDE, APADEM, CERENIF and CONEB.

519. The National Plan of Action for Children was set up by Decree No. 14.892 of September 1992. The plan aims at implementing a comprehensive set of programmes by means of coordinated action in the public sector, by non-governmental organizations and by the community to achieve the following targets:

(a) To reduce mother and child morbidity and mortality rates and acute and general malnutrition;

(b) To reduce serious and moderate malnutrition;

(c) To promote access to drinking water and health services;

(d) To consolidate and expand enrolment and attendance in basic and primary education;

(e) To reduce illiteracy;

(f) To protect children with special difficulties.

520. The Directorate-General for the Protection of Juveniles, which is part of the Ministry of Justice and Labour, has begun preparatory activities for the reform of the Code for Juveniles (Act 903/81) in order to adapt it to the provisions of the Convention on the Rights of the Child, to which Paraguay is a party. For this purpose, a technical team engaged by UNICEF and consisting of lawyers, teachers and psychologists working with young people, together with organizations specializing in those areas, has tackled the analysis and adaptation of the rules in the Code.

521. The draft Code for Juveniles now before the appropriate committee in the Chamber of Deputies for consideration and subsequent approval is considered progressive and differs from the earlier code, which was paternalistic in approach. It abolishes the stigmatizing concept of "minors in an irregular situation", and is based on the principle that juveniles should enjoy fundamental rights, irrespective of their social origin. It also recognizes the right of juveniles to special protection in keeping with their physical and mental development.

522. On 26 October 1992, Act No. 122/91 establishing exemption from arrest and custody pending trial was promulgated. This Act also concerns juveniles charged with offences coming under criminal jurisdiction.

Definition of the child

523. There is no definition of the child in Paraguayan legislation and regulations. The age of majority is 20; children may not be held criminally liable until the age of 14.

524. Young people over 18 possess full capacity to enter into a contract of employment without permission. Young people aged between 12 and 18 require permission (Labour Code, arts. 35 and 36). Under the Labour Code, the provisions of the Code for Juveniles must be complied with when young people under 18 are engaged to work. The minimum age at which part-time work is authorized is 12, and domestic employment is authorized from the age of 15.

525. Persons acquire full civil rights and the right to conduct their affairs at the age of 18. The minimum age for matrimony is 16 for both men and women. Men perform compulsory military service from the age of 17 and may voluntarily enlist, with legal authorization, from the age of 15. The age of liability is 15 and a statement in a court is invalid if the child is under 14 years of age. Children under 15 years of age may not be given custodial sentences.

526. Children under the age of 18 may not enter establishments that are open at night. Alcoholic beverages may not be sold to persons under 18 years of age.

Name and nationality

527. The draft reform of Code for Juveniles states:

(a) Art. 11. "... a newborn child is to be identified by taking foot and finger prints of its parents. If the father is absent the mother will provide prints and vice versa";

(b) Art. 12. "... the print must be taken within 24 hours and filed with the Civil Registry Office within 36 hours of the birth of the child";

(c) Art. 13. "... any child, of either sex, shall be entitled to know his or her identity and to initiate judicial proceedings to determine his or her origin and natural parents";

(d) Art. 14. "... the relevant judicial investigation shall be confidential".

Preservation of identity

528. According to the Ministry of Education and Worship, bilingualism is one reason why 21 per cent of pupils repeat first grade, 65 per cent drop out of school before completing primary education and 30 per cent drop out of school in the course of the first cycle of education.

529. The new wave of educational reform must necessarily address the complex nature of the bilingual educational process. Consideration will have to be given, within the reform, to teacher training, the adaptation of texts, content and methodology.

530. Under article 63 of the Constitution "the right of indigenous peoples to maintain and develop their ethnic identity in the areas where they live is recognized. They also have the right, without let or hindrance, to their own political, social, economic, cultural and religious structures, as well as voluntarily to submit to their customary rules that regulate their communal life, providing that such structures are not at variance with the fundamental rights embodied in this Constitution. Customary indigenous law shall be taken into account in legal disputes".

Article 25

531. The Paraguayan Constitution recognizes the right of citizens, regardless of sex, to take part in the conduct of public affairs, directly or through representatives, as stipulated by the Constitution and the law (art. 117).

532. The right to vote is also recognized in the Constitution. Under the terms of article 3: "The people shall exercise public authority by suffrage". Article 118 states: "Suffrage is the voter's right, duty and public responsibility. It is the basis for a democratic and representative system of government. It is based on the universal, free, direct, equal and secret ballot, with a public and official examination of the ballot papers using a system of proportional representation".

533. Again, it is stipulated that the President and Vice-President of the Republic are to be elected together and directly by the people, by a simple majority of votes cast in a general election which must be held from 90 to 120 days before the end of the current constitutional term. Similarly, the governors of departments and members of the departmental councils (decentralization of the Executive introduced by the 1992 Constitution) must be elected by the citizens living in the respective departments, in elections held at the same time as the general elections.

534. The other branch of government that must be elected by the people is the Legislature, in which both senators and deputies are elected, also in elections held together with the presidential elections, for a term of office of five years.

535. However, although suffrage is the principal means of expression of the will of the people, it is not the only one. The present Constitution allows for referendums, although with many restrictions as to both subject and scope, since it also establishes which subjects may be submitted to a referendum and empowers the Congress to decide whether or not the referendum shall be binding.

536. Similarly, article 123 of the Constitution grants voters the right to propose bills to Congress through popular initiative. Consistent with this provision of the Constitution and in order for it not to remain ineffective, the Constitution prohibits any delegating of the authority to consider bills produced by popular initiatives.

537. Obviously, the new Constitution provides for many forms of participation by citizens. The previous Constitution simply provided for participation in elections and then delegated all tasks relating to national policy to the elected leaders.

538. Under the Constitution, voters are Paraguayan citizens living on national territory, 18 years of age or over, without distinction. Citizens are eligible to vote with no restrictions other than those laid down in the Constitution and the law. Aliens with permanent residence enjoy the same right with regard to municipal elections.

539. Article 75 of the Electoral Law stipulates in detail which citizens cannot vote, including those declared to be under a legal disability; deaf mutes who cannot make themselves understood in writing; soldiers and officers of the armed and police forces and students of the Military and Police Training Institutes, detainees or those deprived of liberty through a warrant issued by a competent judge; those sentenced to deprivation of liberty or disqualification to vote and those declared to be in contempt of court in an ordinary or military criminal case.

540. The Paraguayan Constitution stipulates that citizens are eligible to vote with no restrictions other than those laid down in the Constitution and the law.

541. It stipulates that the President and Vice-President of the Republic must fulfil the following requirements: (a) they must be of Paraguayan nationality by birth; (b) they must have reached 35 years of age, and (c) must enjoy full exercise of their civil and political rights (art. 228).

542. Citizens fulfilling the following requirements may run for governor of a departmental council: (a) a Paraguayan citizen by birth; (b) at least 30 years of age, and (c) a native and resident of the department (art. 162).

543. As to membership of the Legislature, the following are the requirements to be elected Deputy: Paraguayan nationality by birth and at least 25 years of age; to be elected Senator, the candidate must also be of Paraguayan nationality by birth and be at least 35 years of age.

544. Under article 1 of the Constitution, the Republic of Paraguay shall be governed as a representative, participatory and pluralistic democracy, founded on the recognition of human dignity.

545. Similarly, it sets a five-year term of office for the President and the Vice-President. This is a fixed period. They may not be re-elected (art. 230). Members of the departmental authorities, governors and members of departmental councils, must also be elected in elections conducted at the same time as the general elections, for a period of five years (art. 161). Again, for the Legislature, senators and deputies, are elected at periodic elections held at the same time as the presidential elections and they serve a five-year term of office.

546. The elections for the period 1993-1998 were held on 9 May 1993. For the first time for many years, there was a real political contest with broad

participation by Paraguayans, who, from their respective political sectors, including a new political movement, Encuentro Nacional, filled the pages of Paraguayan history with their demonstrations, demands and active participation on election day. The following statistics were provided by the Board of Elections:

(a) National list: presidential elections

Eligible to vote: 1 698 984
Registered voters: 1 180 082
Blank ballots: 21 470
Invalid ballots: 26 980

(b) Percentage of participation: 69.45%

(c) Percentages obtained by the different political parties and movements in the presidential elections:

List 1 (ANR) : 40.09%
List 2 (PLRA) : 32.06%
List 4 (CDS) : 0.16%
List 5 (PL) : 0.09%

List 7 (PT) : 0.17%
List 8 (PNS) : 0.07%
List 9 (AEN) : 23.04%
List 10 (MAPN): 0.09%
List 12 (MPSP : 0.08%

The system used for awarding seats in the National Congress, for both senators and deputies, is the D'Hont System, as explicitly stated in the Elections Act.

(d) Seats obtained by the various political parties and movements:

Asociación Nacional Republicana (ANR) (Partido Colorado)	12
Partido Liberal Radical Auténtico (PLRA)	4
Asociación Encuentro Nacional (AEN)	1

(e) Membership of governmental councils

	Department	ANR	PLRA	AEN
1.	Concepción	4	4	1
2.	San Pedro	5	4	1
3.	Cordillera	5	5	1
4.	Guairá	5	3	1
5.	Caaguazú	6	5	1
6.	Caazapá	4	2	2
7.	Itapúa	6	4	2

	Department	ANR	PLRA	AEN
8.	Misiones	4	3	1
9.	Paraguarí	5	4	1
10.	Alto Paraná	5	4	2
11.	Central	8	8	5
12.	Ñeembucú	4	2	2
13.	Amambay	3	2	2
14.	Canindeyú	4	4	0
15.	Presidente Hayes	4	2	2
16.	Alto Paraguay	4	1	2
17.	Boquerón	4	0	3

547. The departmental councils have also been incorporated into the D'Hont System, and as may be seen in the above table, the three largest political parties have gained seats in practically all the departmental councils.

548. Once the elections ended, with the Partido Colorado presumed to be the winner, the opposition continued to keep a very tight check on the vote-counting process. It requested and obtained the annulment of irregular ballots, which amounted to 26,000 ballots or 105 electoral committees. This changed the allocation of Deputies' seats, and of the three at issue, two were attributed to the PLRA and one, the seat for Boquerón Department, to the Encuentro Nacional political movement.

Article 26

549. Our present Constitution stipulates in article 46 that all the inhabitants of the Republic are equal in dignity and rights. No discrimination is permitted. The same article stipulates that the State shall remove obstacles or prevent factors maintaining or encouraging discrimination, and finally, that any protective measures adopted to remedy inequalities shall be regarded not as discriminatory but as egalitarian.

550. In addition, article 47 guarantees all the inhabitants of the Republic equal access to justice, equality before the law, equal access to non-elective public office and equal opportunity.

551. Article 58 also establishes equal civil, political, economic, social and cultural rights for men and women. Under the same article, the State must promote the appropriate conditions and establish the appropriate mechanisms to make this equality genuine and effective.

552. As to equal protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status, the Constitution bases itself on democratic principles in endeavouring to ensure equal and effective protection for all citizens by taking into account most, if not all, aspects and

requiring all domestic legislation ranking below the Constitution to be amended so as to guarantee that constitutional principles will be followed in practice. By way of illustration, all the comments made in this report on articles 2 and 3, concerning non-discrimination, are applicable to article 26.

Article 27

Ethnic groups

553. Paraguay is a multi-ethnic country, with an indigenous population and strongly influenced by Spanish culture; with the founding of Asunción in 1537, Paraguay's population nucleus was formed by Spaniards and Guaraní Indians. As a result of great miscegenation, the rudiments of a new nationality characterized by bilingualism and a blend of both cultures were formed.

554. There are 17 ethnic groups in Paraguay belonging to 5 linguistic families. The right of indigenous peoples to private property was recognized with the promulgation of Act No. 904/81, the "Indigenous Communities Statute".

555. Similarly, through Act No. 234/93, the Parliament ratified ILO Convention No. 169, the Convention concerning Indigenous and Tribal Peoples in Independent Countries. This international instrument has become part of national positive law, provisions of which have been brought into line with the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and numerous international instruments on the prevention of discrimination.

556. The Government of Paraguay accepts the right of indigenous peoples to their cultural identity, and there are no legal restrictions on such groups enjoying their own culture, professing and practising their own religion or using their own language, as stipulated in article 27 of the Covenant.

557. Chapter V of the Constitution explicitly covers indigenous peoples. Article 62 states that the Constitution recognizes the existence of indigenous peoples and cultures before the Paraguayan State was established and formed.

558. Article 63 recognizes the right of indigenous peoples to maintain and develop their ethnic identity in the areas where they live. They also have the right, without let or hindrance, to their own political, social, economic, cultural and religious structures, as well as voluntarily to submit to their customary rules that regulate their communal life, providing that such structures are not at variance with the fundamental rights embodied in this Constitution. The same article, in fine, states that customary indigenous law shall be taken into account in legal disputes.

559. Article 64 establishes the right of indigenous peoples to communal ownership of land, the area and quality of which must be adequate for the maintenance and development of their characteristic ways of life. It also states that the land shall be made available by the State free of charge and shall not be subject to seizure, is indivisible, non-transferable and

imprescriptible, may not be used as security in respect of contractual obligations or leased, and is also exempt from taxation. Also, they may not be displaced or resettled without their express consent.

560. Article 65 guarantees the indigenous peoples the right to participate in the economic, social, political and cultural life of the country in accordance with their customary usages, the Constitution and national laws.

561. Article 66 stipulates that the State shall respect the special cultural characteristics of the indigenous peoples, particularly in matters concerning formal education. It shall, moreover, take steps to protect them against demographic decline, degradation of the areas where they live, environmental pollution, economic exploitation and cultural alienation.

562. Article 67 states that members of indigenous peoples shall be exempt from social, civil or military services, and from legal public obligations.

Religious groups

563. Roman Catholicism has ceased to be the official religion in the Republic of Paraguay. However, it continues to be the predominant religion.

564. Article 24 of the Constitution provides for recognition of freedom of religion, worship and ideology with no limitations other than those established by the Constitution and by the law. Article 24 states that "no religion shall have official status". It also stipulates that State relations with the Catholic Church shall be based on independence, cooperation and autonomy. The independence and autonomy of the churches and religious denominations are guaranteed, with no limitations other than those laid down by the Constitution and by law. The same article *in fine* states that no one may be harassed, investigated or obliged to testify because of his beliefs or ideology.

565. Article 62 of the Constitution guarantees special protection for indigenous religions.

566. The right of religious minorities to profess and practice their religion is fully respected in Paraguay. The law makes no distinctions. No one wishes to be called a sect. The Department of Worship registers them all as "religious associations". In practice a distinction does exist. Among the Christian churches a distinction is made between the traditional religions (Orthodox, Lutheran, Anglican) and the "sects", which are called "new religious movements" (Mormons, Jehovah's Witnesses). The practical distinction is that the former accept the Nicene Creed and Jesus as Saviour; they are members of the World Council of Churches and usually are not fanatical and do not try to convert, but favour ecumenicalism. The latter, on the other hand, consider other books or "prophets", different from those in the Bible, to be divine revelations; they are closed to ecumenicalism. Nevertheless, all have the same legal protection in Paraguay. There is no discrimination on religious grounds.

Linguistic groups

567. Spanish has traditionally been the official language and the one taught in the schools, but, as stipulated in the recently promulgated Constitution, Spanish and Guaraní are recognized as being the two official languages of the Republic. Article 140 of the Constitution stipulates: "Paraguay is a multi-cultural and bilingual country. Its official languages are Spanish and Guaraní. The law sets forth conditions for the use of both languages. Indigenous languages and those of other minorities are part of the nation's cultural heritage".

568. Paraguayan bilingualism is characterized by the large extent to which both languages are used. Their complementarity depends largely on social class and on the situation in which the linguistic relations take place. The extent to which both languages are used is illustrated by information from the 1992 census, according to which 41 per cent of the total population normally speak only Guaraní; 48 per cent speak both languages and approximately 7 per cent speak only Spanish. The rest are distributed among other languages. The following is the language use distribution by geographical area: in the rural sector 70 per cent of the population aged 5 and over normally speak Guaraní; 31 per cent are bilingual and 5 per cent speak only Spanish. In the urban sector 15 per cent speak only Guaraní, over 70 per cent are bilingual, 13 per cent speak only Spanish and the rest speak foreign languages. These figures are a clear indication of the importance of the native language in Paraguay.

569. Spanish is usually preferred in urban circles, but Guaraní is found in both rural and urban circles. Very few people are unfamiliar with Guaraní, even in Asunción, so it is possible to speak a rural and urban bilingualism, but it is less widespread in the urban areas.

570. Another provision of the Constitution guarantees instruction in both the official languages (Spanish and Guaraní) in the Paraguayan school system. Thus, article 77 stipulates: "Teaching in the early stages of schooling shall be provided in the official language constituting the mother tongue of the pupil. Instruction shall likewise be provided to enable the pupil to learn and use both official languages of the Republic. In the case of ethnic minorities whose mother tongue is not Guaraní, one of the two official languages may be chosen".

571. In order to give effect to this provision of the Constitution, a Bilingual Education Programme with the following objectives is in the planning stage:

(a) To make the educational system more democratic by providing equal opportunity for children from the rural and urban sectors;

(b) To reduce the illiteracy, drop-out and repeat rates;

(c) To obtain acceptable language proficiency in Spanish and better educational performance, and therefore avoid producing functional illiterates by literary in Guaraní alone;

(d) To foster the harmonious and full educational development of peasant children and children from the low-income urban sector whose mother tongue is Guaraní (monolingual and beginner bilingual children);

(e) To ensure that children are fluent in both Guaraní and Spanish and are able to separate the structures of the two languages;

(f) To expand and enrich Paraguayan bilingualism through teaching in both languages;

(g) To foster school-community relations, principally in the rural sector;

(h) To strengthen and affirm the identity of rural children, through knowledge of the native language.

572. In short, Spanish and Guaraní live in harmony in Paraguay, at all times, throughout national territory.

Conclusion

573. This first report to be submitted by the Government of Paraguay has sought to provide as complete a picture as possible in keeping with the reporting guidelines.

574. As the report shows, the changes our country has been experiencing since early February 1989 are noticeably reflected in our legal order, based on our new Constitution, which clearly and explicitly enshrines the democratic principles that were violated for so long.

575. The Transitional Parliament has begun to ratify a series of international human rights instruments to ensure that they are enforced and protected by permanently incorporating them into the legal system. Significantly, the first law enacted was the law ratifying the Pact of San José, Costa Rica, or the American Convention on Human Rights, Act No. 1/89. It was followed by a number of instruments, including both the United Nations Covenants.

576. To promote, protect and disseminate human rights, the Directorate-General for Human Rights was established as part of the Ministry of Justice and Labour, after which Paraguay officially requested the Commission on Human Rights, to cooperate by ceasing to keep it under observation after over 20 years, since it had given obvious signs of its intention to democratize the country and to conduct judicial investigations into the human rights violations that occurred throughout the authoritarian regime.

577. One favourable event was Paraguay's recognition of the competence of the Inter-American Court of Human Rights, in January 1993, days before Paraguay's participation in the Regional Meeting for Latin America and the Caribbean, held at San José from 18 to 22 January, in preparation for the World Conference on Human Rights, which adopted a firm and determined position in

favour of defending the most vulnerable groups. We thus aligned ourselves with the countries in the vanguard on this matter, as the World Conference on Human Rights in Vienna showed.

578. Mention should also be made of the first free elections, held on 9 May 1993, which represented a firm step towards strengthening democracy, a cherished wish for over three decades.

579. Trusting that the consideration of this report will take into account the country's socio-political, economic and cultural situation, we await the opportunity to reply to any further questions the Committee might wish to ask.

Annex

INFORMATION SOURCES

National Constitution of the Republic of Paraguay.

Code of Criminal Procedure.

Code of Civil Procedure.

Civil Code.

Penal Code.

Code for Juveniles (Act No. 903/81).

Electoral Code (Act No. 1/90).

Labour Code (Act No. 213/93).

Act No. 1/92, partly reforming the Civil Code.

Act No. 45/91, on dissolution of the marriage bond.

Act No. 104/90, repealing and amending certain articles of the Criminal Code.

Act No. 270/70, relating to the Prison System.

Act No. 879/89, the Code of Judicial Organization.

Act No. 122/91, establishing temporary exemption from pre-trial detention.

Act No. 1340/89, modifying and updating Act No. 357/72, which punishes unlawful trafficking in narcotics and dangerous drugs and other related offences and establishes measures of prevention and recovery for drug addicts.

Decree No. 7,905/90, authorizing the Ministry of Foreign Affairs to communicate to the Secretary-General of the United Nations Paraguay's withdrawal of its geographical reservation to the Convention relating to the Status of Refugees of 28 July 1951 and the adoption of the provisions laid down in article 1, section B, paragraph 1 (b) of the Convention.

Act No. 227/93, establishing the Secretariat for the Development of Repatriates and Internally Displaced Persons.

Act No. 470/74 relating to Migration.

Act No. 904/81, the Indigenous Communities Statute.

Act No. 234/93, adopting International Labour Convention No. 169, the Convention concerning Indigenous and Tribal Peoples in Independent Countries, concluded at Geneva on 7 June 1989.

Act No. 383/72, establishing the Department of Worship.

Act No. 14/90, issuing regulations for article 76 of the Constitution.

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